
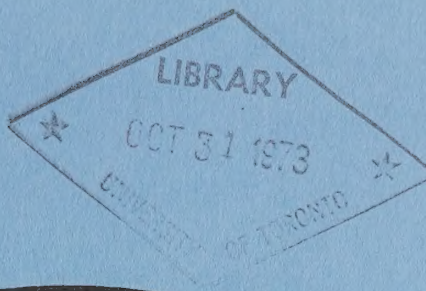


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Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1973] OLRB REP.



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17. AS WE HAVE ALREADY OBSERVED, THERE IS NOTHING IN THE EVIDENCE IN ANYWAY IMPLICATING THE APPLICANT IN THE RECRUITING TACTICS ADOPTED BY THESE EMPLOYEES WHO UNDERTOOK TO SIGN UP UNION MEMBERS. THE STATEMENTS OF THE EFFECTS OF NON-MEMBERSHIP MADE BY THE ORGANIZERS WERE ON THE EVIDENCE, OF THEIR OWN DEVISING. THEY WERE MADE BY EMPLOYEES TO FELLOW EMPLOYEES, DESCRIBED IN SEVERAL INSTANCES AS "FRIENDS" OF THESE COMPLAINANTS. THE STATEMENTS MAY WELL HAVE BEEN MISLEADING ALTHOUGH THEY WERE SOMEWHAT QUALIFIED IN THE CASE OF McFEGGAN AND CROFT, BUT THEY COULD HAVE BEEN AS READILY CHECKED BEFORE THE SIGNING AS THE EVIDENCE SHOWS THEY WERE AFTERWARDS.

18. THE BOARD FINDS THAT THE ACTIONS OF THE EMPLOYEE ORGANIZER'S WERE NOT SUCH AS WOULD UNDULY INFLUENCE A REASONABLE EMPLOYEE AND DO NOT CONSTITUTE INTIMIDATION, COERCION OR THREATS WITHIN THE MEANING OF THE ACT. THE CHARGES ARE ACCORDINGLY DISMISSED.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON FEBRUARY 19TH, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2) (J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATION WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. D. BELL: JUNE 28, 1973.

I CONCUR WITH THIS DECISION EXCEPT THAT, HAVING REVIEWED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT HAROLD HOLMAN'S DUTIES AND HIS COMMUNITY OF INTEREST IDENTIFY HIM WITH THE OFFICE STAFF AND AS SUCH SHOULD BE EXCLUDED FROM THE BARGAINING UNIT AGREED TO BY THE PARTIES.

3113-72-R: BOOT AND SHOE WORKERS' UNION; CLC, AFL-CIO (APPLICANT) v. JUNIOR FOOTWEAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

DECISION OF THE BOARD: JULY 3, 1973.

. . .

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 7, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT THE EMPLOYEES OF THE RESPONDENT AT MARKDALE CONSTITUTE A SEPARATE UNIT OF EMPLOYEES FROM THOSE EMPLOYED BY THE RESPONDENT AT ITS MOUNT FOREST PLANT. ALTHOUGH IT MAY BE THAT AT THE

COMMENCEMENT OF THE MOUNT FOREST OPERATIONS THE RESPONDENT DEPENDED UPON CERTAIN KEY EMPLOYEES FROM MARKDALE IN ORDER TO GET THE MOUNT FOREST OPERATIONS UNDERWAY, HOWEVER ONCE THE MOUNT FOREST FACILITY BECAME OPERATIONAL THE MOUNT FOREST PLANT, WHICH IS SOME THIRTY-FIVE MILES DISTANT FROM MARKDALE, BECAME SUFFICIENTLY INDEPENDENT IN ITS OPERATIONS FROM A LABOUR RELATIONS POINT OF VIEW THAT THE EMPLOYEES AT THE MOUNT FOREST PLANT OUGHT NOT TO BE INCLUDED IN A BARGAINING UNIT WITH THE EMPLOYEES AT MARKDALE. WE ARE ACCORDINGLY SATISFIED ON THE EVIDENCE BEFORE US AND ESPECIALLY THE EVIDENCE OF THE GEOGRAPHIC SEPARATION OF THE TWO PLANTS THAT THE COMMUNITY OF INTEREST OF THE EMPLOYEES AT MARKDALE IS SUFFICIENTLY SEPARATED FROM THE EMPLOYEES AT MOUNT FOREST SO THAT THE FACTS OF THIS CASE ARE DISTINGUISHABLE FROM THE FACTS IN THE USARCO LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, P. 526.

3. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

5. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

3632-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF CHINGUACOUSY (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
JULY 3, 1973.

. . .

3. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER THE UNION WROTE TO THE BOARD AS FOLLOWS:

FOLLOWING THE CLOSING OF THE POLLS AT THE REPRESENTATION VOTE OF THE ABOVE EMPLOYEES, THE PARTIES WERE PRESENT WHILE THE BALLOTS WERE COUNTED.

CONSIDERING THE RESULT OF THE VOTE AND CONSIDERING THE THREE SEGREGATED BALLOTS, I AM CONCERNED THAT COUNTING THE THREE SEGREGATED

BALLOTS MAY PREVENT THE SECRECY OF THE THREE
INDIVIDUAL SEGREGATED VOTES.

FOR THIS REASON, I WOULD REQUEST THAT THE
BALLOTS NOT BE OPENED AND A NEW VOTE BE ORDERED.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE UNION WITH RESPECT TO THE SEGREGATED BALLOTS, THE BOARD IS NOT PREPARED TO ACCEDE TO THE UNION'S REQUEST AND DIRECT A NEW REPRESENTATION VOTE. IF THERE HAD BEEN ONLY ONE SEGREGATED BALLOT AND ACCORDINGLY NO WAY TO CONCEAL THE MANNER IN WHICH THE BALLOT WAS CAST BY THE EMPLOYEE CONCERNED, THE BOARD WOULD IN THAT INSTANCE DIRECT A NEW REPRESENTATION VOTE. HOWEVER, SINCE THERE ARE THREE SEGREGATED BALLOTS AND SINCE THE BOARD REGULARLY CONDUCTS REPRESENTATION VOTES IN BARGAINING UNITS COMPRISED OF ONLY THREE OF FOUR PERSONS (E.G. BARGAINING UNITS OF STATIONARY ENGINEERS), THE BOARD IS OF THE VIEW THAT THE MANNER IN WHICH ANY ONE INDIVIDUAL HAS CAST HIS SEGREGATED BALLOT WILL NOT NECESSARILY BE REVEALED.

5. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR CAUSE THE SEGREGATED BALLOTS CAST BY MESSRS. BURGERS, COLLISS AND McLAREN TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER OLIVER HODGES: JULY 3, 1973.

I DISSENT.

I AM OF THE OPINION THAT IN THE CIRCUMSTANCES OF THIS CASE A NEW VOTE SHOULD BE ORDERED.

THE COUNTING OF THE BALLOTS AT THE CLOSING OF THE POLL HAS EXPOSED THE SEGREGATED VOTERS AND I DO NOT WISH TO TAKE THE RISK THAT IS EVIDENT.

THE SECRECY OF THE BALLOT IS THE PARAMOUNT CONSIDERATION IN THIS MATTER.

3824-73-R: YVON COTE ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CHAPLEAU LUMBER CO. LTD. (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: F. R. VON VEH, E. ROVET AND YVON COTÉ FOR THE APPLICANT; M. LEVINSON AND J. C. HORAN FOR THE RESPONDENT; W. V. SASSO, H. LITOWITZ AND M. HANKINSON FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 4, 1973.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT, MADE PURSUANT TO THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT.

2. AT THE OUTSET OF THESE PROCEEDINGS HELD ON JUNE 14, 1973, COUNSEL FOR THE APPLICANT SUBMITTED THAT THE BOARD SHOULD DISREGARD ANY REPRESENTATIONS CONTAINED IN THE RESPONDENT'S REPLY ON THE BASIS THAT SUCH REPLY WAS FILED WITH THE BOARD TWO DAYS AFTER THE TERMINAL DATE OF MAY 29, 1973, SET IN THIS MATTER. IT IS SUBMITTED THAT IN VIEW OF SUCH LATE FILING AND HAVING REGARD TO THE MANDATORY PROVISIONS OF SECTION 14 OF THE BOARD'S RULES OF PROCEDURE, THE RESPONDENT SHOULD NOW BE PRECLUDED FROM MAKING ANY REPRESENTATIONS AS SET FORTH IN ITS REPLY. COUNSEL FOR THE APPLICANT HOWEVER CONCEDED THAT HE WAS NOT PREJUDICED BY SUCH LATE FILING. IN SUPPORT OF HIS POSITION, COUNSEL FOR THE APPLICANT ALSO ARGUES THAT THE RELEVANT STATEMENT IN THE REPLY IS EXTREMELY VAGUE AND BROAD AND THAT FURTHER, THE RESPONDENT FAILED TO REPLY TO HIS DEMAND FOR PARTICULARS IN THIS REGARD AS CONTAINED IN THE APPLICANT'S LETTER DATED JUNE 5, 1973. THIS STATEMENT AS SET OUT IN THE REPLY IS AS FOLLOWS:

"IT (E.G. THE RESPONDENT) SUBMITS THAT EVEN IF NO COLLECTIVE AGREEMENT IS FOUND TO BE IN EXISTENCE THAT THE APPLICATION SHOULD BE DISMISSED ON OTHER GROUNDS RELATING TO TIME-LINESS."

IT IS THE APPLICANT'S CONTENTION THAT THE STATEMENT IS SO INDEFINITE OR INCOMPLETE SO AS TO CAUSE THE BOARD IN THE CIRCUMSTANCES TO STRIKE SUCH STATEMENT PURSUANT TO THE PROVISIONS OF SECTION 43(3) OF THE BOARD'S RULES OF PROCEDURE. HOWEVER, DURING THE COURSE OF THE HEARING, IT BECAME APPARENT THAT MR. LEVINSON, COUNSEL FOR THE RESPONDENT, WAS, IN EFFECT, SEEKING THE IMPOSITION OF A BAR IN THESE CIRCUMSTANCES BASED UPON THE PROVISIONS OF SECTION 92(2)(1) OF THE ACT. WHEN COUNSEL FOR THE APPLICANT ADVISED THE BOARD HE WOULD NOT BE SEEKING AN ADJOURNMENT IN THESE CIRCUMSTANCES, THE BOARD RESERVED ITS DECISION CONCERNING HIS TWO PRELIMINARY OBJECTIONS TO THIS APPLICATION.

3. THE BOARD IN THE CANADIAN GENERAL-TOWER LIMITED CASE OLRB M.R. OCTOBER 1968, P. 712 STATED, AT PAGE 715, AS FOLLOWS:

"THE BOARD'S RULES OF PROCEDURE ARE NOT DESIGNED AS OBSTACLES PLACED IN THE PATH OF PARTIES TO A PROCEEDING, BUT ARE INTENDED TO PERMIT THE BOARD TO ADMINISTER THE LABOUR RELATIONS ACT IN A MANNER WHEREBY ONE PARTY WILL NOT BE ABLE TO UNFAIRLY GAIN A PROCEDURAL ADVANTAGE OVER THE OTHER TO THE PREJUDICE OF THE OTHER PARTY. THE BOARD'S PRIMARY FUNCTION IN AN APPLICATION FOR CERTIFICATION IS TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES

IN THE BARGAINING UNIT IN THE EXERCISE OF THEIR RIGHT TO CHOOSE A BARGAINING AGENT. THIS FUNCTION IS NOT PROPERLY EXERCISED IF THE BOARD REFUSES TO MAKE THE DETERMINATION OF THE EMPLOYEES' WISHES BECAUSE OF SOME TECHNICAL IRREGULARITY WHICH IN NO WAY CREATES AN UNFAIR ADVANTAGE PREJUDICIAL TO THE RIGHTS OF A PARTY OR PREVENTS THE BOARD FROM PROPERLY ASSESSING THE EVIDENCE."

IN OUR OPINION THESE STATEMENTS ARE EQUALLY APPLICABLE TO THE CIRCUMSTANCES OF THIS CASE.

4. HAVING CAREFULLY REVIEWED ALL OF THE CIRCUMSTANCES OF THIS CASE, AND BEING SATISFIED THAT THE APPLICANT WAS NOT UNDULY PREJUDICED IN THIS REGARD, WE ARE THEREFORE PREPARED TO ACCEPT THE REPLY OF THE RESPONDENT AS AMENDED BY COUNSEL'S REPRESENTATIONS ELICITED AT THE INITIAL HEARING OF THIS MATTER ON JUNE 14, 1973.

5. UPON THE BOARD RESERVING UPON THE PRELIMINARY OBJECTIONS RAISED BY COUNSEL FOR THE APPLICANT, COUNSEL FOR THE RESPONDENT WAS ACCORDINGLY INSTRUCTED TO PROCEED WITH HIS ARGUMENT AS TO WHY THE BOARD SHOULD IMPOSE A BAR IN THE CIRCUMSTANCES. HOWEVER, AS COUNSEL FOR THE RESPONDENT WAS IN THE PROCESS OF OUTLINING THE FACTS UPON WHICH HIS ARGUMENT WAS TO BE BASED, BOTH COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE INTERVENER, OBJECTED TO CERTAIN ALLEGED FACTS BEING PLACED BEFORE THIS BOARD AS EVIDENCE. ACCORDINGLY, THE BOARD INSTRUCTED ALL COUNSEL TO MEET AND TO ENDEAVOUR, IF POSSIBLE, TO ARRANGE FOR AN AGREED STATEMENT AS TO FACTS. UPON THE RECONVENING OF THESE PROCEEDINGS COUNSEL FOR THE RESPONDENT OUTLINED TO THE BOARD THE ITEMS THAT HAD BEEN AGREED UPON BY COUNSEL WHEREUPON THE BOARD DIRECTED THAT ANY FURTHER EVIDENCE, IN THE ABSENCE OF AGREEMENT, WOULD HAVE TO BE ELICITED IN THE USUAL MANNER. AT THIS POINT, COUNSEL FOR THE RESPONDENT, IN AN EFFORT TO SHOW THE EXISTENCE OF AN "ACTIVE BARGAINING RELATIONSHIP" WITH THE INTERVENER, ATTEMPTED TO ELICIT FROM COUNSEL FOR THE INTERVENER AN ADMISSION THAT HE WAS THE SIGNATORY TO TWO LETTERS WHICH WERE TENDERED BEFORE HIM. AFTER SOME DELIBERATION, COUNSEL FOR THE INTERVENER TOOK THE POSITION THAT ALTHOUGH HE WAS PREPARED TO ADMIT THAT THESE LETTERS BORE HIS SIGNATURE, HE WAS NEVERTHELESS NOT PREPARED TO GIVE EVIDENCE IN THE WITNESS-BOX AND THUS SUBJECT HIMSELF TO CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT. ALTHOUGH COUNSEL FOR THE RESPONDENT AGREED TO THIS PROCEDURE, COUNSEL FOR THE APPLICANT STRENUOUSLY OBJECTED TO THE INTRODUCTION OF SUCH EVIDENCE WITHOUT HIS FURTHER RIGHT TO CROSS-EXAMINE IN THESE CIRCUMSTANCES.

6. HAVING REGARD TO THESE PARTICULAR CIRCUMSTANCES, WE FIND THAT IN THE ABSENCE OF AGREEMENT OF ALL OF THE PARTIES TO THIS APPLICATION, THE ADMISSION OF THESE LETTERS IN EVIDENCE MUST BE INTRODUCED IN THE NORMAL MANNER, NAMELY, THROUGH VIVA VOCE TESTIMONY. IN OUR OPINION, IT MAKES NO DIFFERENCE THAT THE WITNESS FROM WHOM THIS EVIDENCE IS SOUGHT TO BE ADDUCED HAPPENS TO BE COUNSEL TO ONE OF THE PARTIES TO

THE PROCEEDINGS. IN THE ABSENCE OF REPRESENTATIONS TO THE EFFECT THAT SUCH COUNSEL MAY BE ASKED TO BREACH HIS SOLICITOR-CLIENT PRIVILEGE, WE CAN SEE NO REASON WHY HE SHOULD BECOME IMMUNE TO BEING CALLED AS A WITNESS IN SUBSEQUENT PROCEEDINGS IN CASES WHERE HE HAS TAKEN AN ACTIVE ROLE IN THE CONDUCT OF NEGOTIATIONS. ACCORDINGLY, THE BOARD IS NOT PREPARED TO ACCEPT THESE ADMISSIONS WITHOUT THE AGREEMENT OF ALL COUNSEL REPRESENTING THE PARTIES HERETO.

7. THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO ENABLE THE PARTIES TO ADDUCE EVIDENCE AND SUBMET REPRESENTATIONS CONCERNING THE ISSUE AS TO WHETHER THE BOARD SHOULD, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, IMPOSE A BAR TO THIS APPLICATION, AND TO ENABLE THE BOARD TO DISPOSE OF ALL OTHER OUTSTANDING ISSUES.

3867-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ECHLIN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: A.E. MUNRO AND F. RAO FOR THE APPLICANT; E.L. STRINGER, Q.C., S. HUNTER AND ROBT. BURIAN FOR THE RESPONDENT; MARGARET NOBLE FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 6, 1973.

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3. THIS IS AN APPLICATION FOR CERTIFICATION.

4. IN THIS CASE THE GROUP OF EMPLOYEES FILED A STATEMENT OF DESIRE INDICATING THAT THEY DID NOT WISH TO BE REPRESENTED BY THE APPLICANT TRADE UNION, AND ACCORDINGLY THERE WAS AN INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

5. THE EVIDENCE INDICATES THAT THE RESPONDENT COMPANY IS AN AMALGAMATION OF TWO SEPARATE COMPANIES AND THAT THE EMPLOYEES IN ONE OF THE FORMER COMPANIES HAD BEEN REPRESENTED BY "THE MACHINISTS UNION". THAT COMPANY HAD MOVED ITS LOCATION AND COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT IN VIEW OF THE RESTRICTIONS IN THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT WITH THE MACHINISTS UNION THAT NO BARGAINING RIGHTS WERE PRESENTLY OUTSTANDING.

6. THE EVIDENCE FURTHER INDICATES THAT THE EMPLOYEES ORIGINATED THE STATEMENT OF DESIRE, NOT OUT OF OBJECTION TO A TRADE UNION, BUT BECAUSE THEY OBJECTED TO THIS PARTICULAR UNION AND THIS PARTICULAR APPLICATION AND PREFERRED THEIR FORMER UNION. THERE IS NO EVIDENCE TO INDICATE THAT THE COMPANY WAS IN ANY WAY INVOLVED IN THE ORIGINATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

7. THE APPLICANT POINTED OUT CERTAIN DISCREPANCIES IN THE EVIDENCE, BUT, THOSE DISCREPANCIES MUST BE LOOKED AT AGAINST THE BACKGROUND OF THE TOTAL SITUATION. IN ASSESSING EVIDENCE IT IS ALWAYS A DIFFICULT TASK WHERE THERE ARE DISCREPANCIES OR ANY INCONSISTENCIES. IN SOME CASES DISCREPANCIES OR INCONSISTENCIES MAY REFLECT UPON THE CREDIBILITY OF THE WITNESSES. HOWEVER, IN OTHER CASES, WHERE THE TESTIMONY OF DIFFERENT WITNESSES IS SO CONSISTENT AND THEIR ANSWERS SO PAT, THAT TOO MAY REFLECT UPON THEIR CREDIBILITY.

8. IN ASSESSING EVIDENCE NOT ONLY MUST THE EVIDENCE OF THE INDIVIDUAL WITNESSES BE ASSESSED, BUT IT SHOULD BE ASSESSED AGAINST THE TOTAL BACKGROUND SITUATION. ONE CANNOT SIMPLY DECIDE THE ISSUE OF CREDIBILITY OR MATTER IN DISPUTE BY THE MERE FACT THAT SOME TESTIMONY MAY BE INCONSISTENT OR OTHER TESTIMONY TOO PAT. VERY OFTEN IN CASES THERE IS A "SENSE" TO THE TESTIMONY AND THE EVIDENCE OF INDIVIDUAL WITNESSES MUST BE TESTED AGAINST THE SENSE OR THE FLOW OF THE TESTIMONY, WHILE TAKING INTO CONSIDERATION THE FACTOR OF HUMAN ERROR. THAT VIEW OF WEIGHING EVIDENCE IS MORE APTLY SET FORTH IN THE JUDGMENT OF O'HALLORAN, J.A., IN FARYNA V. CHORNY, [1952] 2 D.L.R. 354 AS FOLLOWS:

"IF A TRIAL JUDGE'S FINDING OF CREDIBILITY IS TO DEPEND SOLELY ON WHICH PERSON HE THINKS MADE THE BETTER APPEARANCE OF SINCERITY IN THE WITNESS BOX, WE ARE LEFT WITH A PURELY ARBITRARY FINDING AND JUSTICE WOULD THEN DEPEND UPON THE BEST ACTORS IN THE WITNESS BOX. ON REFLECTION IT BECOMES ALMOST AXIOMATIC THAT THE APPEARANCE OF TELLING THE TRUTH IS BUT ONE OF THE ELEMENTS THAT ENTER INTO THE CREDIBILITY OF THE EVIDENCE OF A WITNESS. OPPORTUNITIES FOR KNOWLEDGE, POWERS OF OBSERVATION, JUDGMENT AND MEMORY, ABILITY TO DESCRIBE CLEARLY WHAT HE HAS SEEN AND HEARD, AS WELL AS OTHER FACTORS, COMBINE TO PRODUCE WHAT IS CALLED CREDIBILITY, AND CF. RAYMOND V. BOSANQUET (1919), 50 D.L.R. 560 AT P. 566, 59 S.C.R. 452 AT P. 460, 17 O.W.N. 295. A WITNESS BY HIS MANNER MAY CREATE A VERY UNFAVOURABLE IMPRESSION OF HIS TRUTHFULNESS UPON THE TRIAL JUDGE, AND YET THE SURROUNDING CIRCUMSTANCES IN THE CASE MAY POINT DECISIVELY TO THE CONCLUSION THAT HE IS ACTUALLY TELLING THE TRUTH. I AM NOT REFERRING TO THE COMPARATIVELY INFREQUENT CASES IN WHICH A WITNESS IS CAUGHT IN A CLUMSY LIE.

THE CREDIBILITY OF INTERESTED WITNESSES, PARTICULARLY IN CASES OF CONFLICT OF EVIDENCE, CANNOT BE GAUGED SOLELY BY THE TEST OF WHETHER THE PERSONAL DEMEANOUR OF THE PARTICULAR WITNESS

CARRIED CONVICTION OF THE TRUTH. THE TEST MUST REASONABLY SUBJECT HIS STORY TO AN EXAMINATION OF ITS CONSISTENCY WITH THE PROBABILITIES THAT SURROUND THE CURRENTLY EXISTING CONDITIONS. IN SHORT, THE REAL TEST OF THE TRUTH OF THE STORY OF A WITNESS IN SUCH A CASE MUST BE ITS HARMONY WITH THE PREPONDERANCE OF THE PROBABILITIES WHICH A PRACTICAL AND INFORMED PERSON WOULD READILY RECOGNIZE AS REASONABLE IN THAT PLACE AND IN THOSE CONDITIONS. ONLY THUS CAN A COURT SATISFACTORILY APPRAISE THE TESTIMONY OF QUICK-MINDED, EXPERIENCED AND CONFIDENT WITNESSES, AND OF THOSE SHREWD PERSONS ADEPT IN THE HALF-LIE AND OF LONG AND SUCCESSFUL EXPERIENCE IN COMBINING SKILFUL EXAGGERATION WITH PARTIAL SUPPRESSION OF THE TRUTH. AGAIN A WITNESS MAY TESTIFY WHAT HE SINCERELY BELIEVES TO BE TRUE, BUT HE MAY BE QUITE HONESTLY MISTAKEN. FOR A TRIAL JUDGE TO SAY "I BELIEVE HIM BECAUSE I JUDGE HIM TO BE TELLING THE TRUTH", IS TO COME TO A CONCLUSION ON CONSIDERATION OF ONLY HALF THE PROBLEM. IN TRUTH IT MAY EASILY BE SELF-DIRECTION OF A DANGEROUS KIND.

THE TRIAL JUDGE OUGHT TO GO FURTHER AND SAY THAT EVIDENCE OF THE WITNESS HE BELIEVES IS IN ACCORDANCE WITH THE PREPONDERANCE OF PROBABILITIES IN THE CASE AND, IF HIS VIEW IS TO COMMAND CONFIDENCE, ALSO STATE HIS REASONS FOR THAT CONCLUSION. THE LAW DOES NOT CLOTHE THE TRIAL JUDGE WITH A DIVINE INSIGHT INTO THE HEARTS AND MINDS OF THE WITNESSES. AND A COURT OF APPEAL MUST BE SATISFIED THAT THE TRIAL JUDGE'S FINDING OF CREDIBILITY IS BASED NOT ON ONE ELEMENT ONLY TO THE EXCLUSION OF OTHERS, BUT IS BASED ON ALL THE ELEMENTS BY WHICH IT CAN BE TESTED IN THE PARTICULAR CASE.

MR. JUSTICE STEPHEN PUT IT ANOTHER WAY: HE SAID (GENERAL VIEW OF THE CRIMINAL LAW, 2ND ED., P. 191) "THAT THE UTMOST RESULT THAT CAN IN ANY CASE BE PRODUCED BY JUDICIAL EVIDENCE IS A VERY HIGH DEGREE OF PROBABILITY....THE HIGHEST PROBABILITY AT WHICH A COURT OF JUSTICE CAN, UNDER ORDINARY CIRCUMSTANCES, ARRIVE IS THE PROBABILITY THAT A WITNESS OR A SET OF WITNESSES TELL THE TRUTH WHEN THEY AFFIRM THE EXISTENCE OF A FACT".

THAT DECISION WAS APPROVED BY THE ONTARIO COURT OF APPEAL IN PHILLIPS ET AL. V. FORD MOTOR CO. OF CANADA LTD. ET AL. [1971] 18 D.L.R. (3d) 641 AT P. 649.

9. IN THIS CASE THE TOTAL CIRCUMSTANCES AND THE BACKGROUND INDICATE THAT THE INCONSISTENCIES IN THE EVIDENCE ARE TO BE VIEWED AS MERELY HUMAN ERROR AND GOING TO THE RECOLLECTION OF THE WITNESSES, AND NOT TO THEIR CREDIBILITY. WE ARE THEREFORE SATISFIED THAT THE STATEMENT OF DESIRE FILED IS AN EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES AND ACCORDINGLY SATISFIES THE REQUIREMENTS OF THIS BOARD.

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12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

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14. THE MATTER IS REFERRED TO THE REGISTRAR.

3216-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THE PRES-TOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. A. MACLEAN, H. CARL ANDERSON AND KEN SIMPSON FOR THE APPLICANT; W. G. PHELPS AND G. N. WATSON FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: JULY 9, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO REPRESENT EMPLOYEES IN WHAT IT DESCRIBES AS A "TAG-END" BARGAINING UNIT. THE PROPOSED BARGAINING UNIT IS COMPRISED SOLELY OF SOME 58 PERSONS CLASSIFIED AS SET-UP SUPERVISORS.

2. HAVING CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 30, 1973 AND THE VERY ABLE AND COMPREHENSIVE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT THE SET-UP SUPERVISORS DO NOT PERFORM ANY OTHER WORK WHICH BARGAINING UNIT MEMBERS PERFORM AND INDEED THEY ARE PRECLUDED FROM DOING SO BY THE PROVISIONS OF THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. ALTHOUGH THEY SPEND TEN PER CENT OF THEIR TIME PERFORMING SET-UP FUNCTIONS WHICH ARE NOT OF THEMSELVES FUNCTIONS WHICH WOULD EXCLUDE THEM FROM THE RIGHT TO COLLECTIVE BARGAINING, THE BALANCE, I. E. NINETY PER CENT OF THEIR TIME, IS DEVOTED EXCLUSIVELY TO SUPERVISORY DUTIES. THE SUPERVISORY DUTIES REQUIRE THEM TO KEEP THE

ASSEMBLY LINES OPERATING AND TO MOVE PEOPLE AROUND TO ACCOMPLISH THIS PURPOSE. ALTHOUGH THEY ARE NOT DIRECTLY INVOLVED IN THE FORMAL GRIEVANCE PROCEDURE, AS OUTLINED IN THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, THEY MAKE INFORMAL ATTEMPTS TO RESOLVE COMPLAINTS, SOMETIMES WITH SUCCESS, BEFORE THE COMPLAINTS REACH THE FORMAL GRIEVANCE STAGE. THEY ALSO HAVE AUTHORITY TO GRANT TIME OFF AND THEY SIGN BARGAINING UNIT EMPLOYEES' TIME CARDS. IN ADDITION, THEY HAVE ATTENDED A NUMBER OF MANAGEMENT MEETINGS.

3. THE APPLICANT INVITED THE BOARD TO RECOGNIZE THE NEED FOR COLLECTIVE BARGAINING BY THE SET-UP SUPERVISORS.

4. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE SET-UP SUPERVISORS SHARE A COMMUNITY OF INTEREST WHICH WOULD PERMIT THE BOARD TO FIND THAT THEY FORM THE APPROPRIATE TAG-END BARGAINING UNIT IN THIS CASE IF THE BOARD IS ABLE TO FIND THAT THEY ARE EMPLOYEES FOR THE PURPOSES OF THE ACT.

5. HOWEVER, THE EVIDENCE CLEARLY ESTABLISHED THAT THE SET-UP SUPERVISORS SPEND NINETY PER CENT OF THEIR TIME PERFORMING FUNCTIONS WHICH ARE CLEARLY DISTINGUISHABLE FROM FUNCTIONS PERFORMED BY THE BARGAINING UNIT EMPLOYEES AND ARE FUNCTIONS FALLING WITHIN THE REALM OF MANAGEMENT FUNCTIONS. THE SUPERVISORY FUNCTIONS PERFORMED BY THE SET-UP SUPERVISORS ARE CLEARLY DISTINGUISHABLE FROM AND ARE OF A HIGHER ORDER THAN THE "SUPERVISORY" FUNCTIONS PERFORMED BY LEAD HANDS. THE LOWER ORDER OF SUPERVISORY FUNCTIONS EXERCISED BY LEAD HANDS IS NORMALLY EXERCISED WHILE THEY ARE ENGAGED IN WORK SIMILAR TO THAT PERFORMED BY OTHER BARGAINING UNIT EMPLOYEES. APART FROM THE SET-UP FUNCTIONS, THE SET-UP SUPERVISORS NORMALLY PERFORM NO PHYSICAL WORK OR WORK WHICH IS SIMILAR TO WORK OF BARGAINING UNIT EMPLOYEES. ALTHOUGH THE SET-UP SUPERVISORS ARE AT THE BOTTOM RUNG OF THE MANAGEMENT LADDER, THEY EXERCISE FUNCTIONS WHICH ARE CLEARLY AND HISTORICALLY OF THE CLASS OF FUNCTIONS WHICH ARE THE DUTIES AND RESPONSIBILITIES OF MANAGEMENT. THE DIRECTION AND SUPERVISION OF THE WORK FORCE, WHEN PERFORMED FOR THE MAJORITY OF A PERSON'S WORKDAY, CANNOT PROPERLY BE CHARACTERIZED AS BARGAINING UNIT WORK.

6. THE EVIDENCE IN THIS CASE IS DISTINGUISHABLE FROM THE EVIDENCE IN THE PETERBOROUGH CIVIC HOSPITAL CASE, OLRB MONTHLY REPORT, MARCH 1973, P. 154, ON WHICH THE APPLICANT RELIED.

7. HAVING ASSESSED THE NATURE, QUALITY AND EXTENT OF THE MANAGERIAL AUTHORITY EXERCISED BY THE PERSONS CLASSIFIED AS SET-UP SUPERVISORS AND HAVING APPLIED THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1966, P. 379; STEEP ROCK IRON MINES LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1968, P. 105, AND THE WINDSOR UTILITIES COMMISSION CASE, OLRB MONTHLY REPORT, MAY 1971, P. 296, WE FIND THAT THE SET-UP SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. SEE ALSO BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF

THE TOWNSHIP OF EAST YORK) CASE, OLRB MONTHLY REPORT, FEBRUARY 1968, P. 1122; BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) CASE, OLRB MONTHLY REPORT, OCTOBER 1968, P. 746; HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, AUGUST 1971, P. 501; AND FEDERAL PACKAGING AND PARTITION COMPANY LIMITED CASE, OLRB MONTHLY REPORT, JULY 1971, P. 448.

8. WE THEREFORE FIND THAT WE HAVE NO JURISDICTION UNDER THE LABOUR RELATIONS ACT TO DETERMINE THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE: JULY 9, 1973.

1. THE APPLICANT UNION HAS APPLIED TO BE CERTIFIED FOR THE FOLLOWING BARGAINING UNIT:

ALL EMPLOYEES OF THE RESPONDENT IN POINT EDWARD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LOCALS 456 AND 421 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, TIME STUDY MEN, GUARDS, DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEADS, CONFIDENTIAL SECRETARIES TO DEPARTMENT HEADS AND PERSONNEL DEPARTMENT EMPLOYEES.

THE FOREGOING PROPOSED UNIT COVERS A GROUP OF 58 EMPLOYEES EMPLOYED BY THE RESPONDENT AS SET-UP SUPERVISORS. IN THE EXAMINER'S REPORT DATED MAY 30, 1973 IT WAS AGREED BY THE PARTIES THAT THE EVIDENCE OF CLIFFORD S. SEWELL WOULD BE CONSIDERED AS REPRESENTATIVE OF THE DUTIES AND RESPONSIBILITIES OF THE FIFTY-EIGHT PERSONS CLASSIFIED AS 'SET-UP SUPERVISORS'. MR. SEWELL'S EVIDENCE IN PARAGRAPH 10 OF THE EXAMINER'S REPORT READS AS FOLLOWS:

GIVING A GENERAL OUTLINE OF WHAT HIS DUTIES AND RESPONSIBILITIES ARE AS A SET-UP SUPERVISOR AND WHAT AUTHORITIES HE HAS AS A SET-UP SUPERVISOR IN RELATION TO THE FUNCTIONS CARRIED OUT BY HIS DEPARTMENT, HE STATED HIS DUTIES ARE TO KEEP THE FINAL ASSEMBLY LINE OPERATING AS EFFICIENTLY AS POSSIBLE WHICH INCLUDE REQUISITIONING MATERIALS, MOVING OF PEOPLE FROM JOB TO JOB AS REQUIRED, TRANSFER OF FINISHED GOODS TO SHIPPING AND GATHER OF ALL SCRAP ONCE A WEEK MAKING SCRAP REPORTS ON SAME. HIS RESPONSIBILITIES ARE TO MAKE SURE

THAT THINGS ARE RUNNING EFFICIENTLY AND AS TO AUTHORITIES, TO MOVE A PERSON FROM ONE JOB TO ANOTHER, TO SEE THAT PEOPLE START WORK ON TIME, THAT'S ABOUT IT.

2. THE REPORT REVEALS THAT MR. SEWELL IS RESPONSIBLE TO JACK SMITH, THE DEPARTMENTAL FOREMAN, AND THAT MR. SEWELL DOES NOT REPORT TO ANY OTHERS IN MANAGEMENT WITH RESPECT TO HIS DUTIES, RESPONSIBILITIES AND AUTHORITIES. HE HAS NO AUTHORITY TO DECIDE ON WAGE RATES FOR A NEW CLASSIFICATION, OR TO INCREASE OR DECREASE EXISTING RATES. IN FACT, HE IS NOT AWARE OF HOW THE RATE OF PAY IS ESTABLISHED FOR A PARTICULAR JOB CLASSIFICATION. IF MR. SEWELL REQUIRES MORE HELP HE REQUESTS SAME FROM HIS FOREMAN AND HIS REQUESTS ARE NOT ALWAYS APPROVED. IN CASES WHERE NEW EMPLOYEES WERE HIRED IN HIS AREA HE STATED HE DID NOT SELECT THE PERSONS TO BE HIRED NOR WAS HE INVOLVED IN ANY WAY IN THEIR SELECTION.

3. DURING THE PROBATIONARY PERIOD OF NEW EMPLOYEES IN HIS AREA, MR. SEWELL IS REQUIRED, AS PART OF HIS RESPONSIBILITIES AS SET-UP SUPERVISOR, TO MAKE AN ASSESSMENT OF THE PERSON'S SUITABILITY FOR EMPLOYMENT BUT HE DOES NOT, AS A RESULT OF THAT ASSESSMENT, ON HIS OWN DECISION, AUTHORIZE THE RETENTION OR REJECTION OF THE INDIVIDUAL FOR EMPLOYMENT WITH THE COMPANY. HE RECOMMENDS TO HIS FOREMAN IF HE FINDS THE EMPLOYEE ACCEPTABLE AND ALSO IF HE IS NOT ACCEPTABLE. AS TO HOW OFTEN HE HAS MADE SUCH RECOMMENDATIONS, HE STATED IT HAS HAPPENED THREE TIMES IN HIS TIME AS SUPERVISOR (17 YEARS) AND HIS RECOMMENDATIONS WERE ACCEPTED IN EACH CASE BECAUSE HE HAD GOOD OPERATORS. HE FURTHER STATED HE SHOULD ADD THAT THE FOREMAN WAS ALSO OF THE SAME OPINION AS THE FOREMAN ALSO STUDIES THE NEW PEOPLE.

4. IT IS MR. SEWELL'S RESPONSIBILITY AS A SET-UP SUPERVISOR TO ASSESS TRANSFERRED EMPLOYEES FOR FILLING HOURLY RATED VACANCIES DURING A TEN-DAY PERIOD AS TO RETENTION OR REJECTION BASED ON HIS ASSESSMENT OF THEIR ABILITY. HE STATED HE WOULD STILL ONLY RECOMMEND TO THE FOREMAN IF HE WAS NOT SATISFIED AND IF THIS WAS THE CASE THE FOREMAN WOULD CERTAINLY TAKE WHATEVER ACTION WAS OPEN TO HIM, NOTING THAT, AS HE INDICATED EARLIER, HE HASN'T HAD TO RECOMMEND REJECTION OF APPLICANTS FILLING HOURLY RATED VACANCIES.

5. IN CASES WHERE EMPLOYEES HAVE VIOLATED THE RULES, I.E. ENGAGED IN UNSATISFACTORY CONDUCT OR CARELESS WORKMANSHIP THAT IS SUBJECT TO CORRECTIVE DISCIPLINARY ACTION, WHEN ASKED WHETHER BY HIS OWN DECISION HE HAS AUTHORITY TO TAKE THE NECESSARY DISCIPLINARY ACTION, MR. SEWELL STATED THAT IN MINOR WAYS HE HAS DONE SO, BUT JUST VERBALLY. HE WOULDN'T SAY DISCIPLINARY; CORRECTIVE ACTION, YES. IF ANYTHING OF A SERIOUS NATURE OCCURRED, THIS WOULD GO INTO THE HANDS OF HIS FOREMAN. HE STATED HE HAS AUTHORITY TO GRANT TIME OFF TO EMPLOYEES FOR PERSONAL REASONS. HE EXPLAINED THAT IF AN EMPLOYEE WANTS TO LEAVE DURING THE DAY THE EMPLOYEE WILL ASK HIM FOR A PASS. HE HASN'T RUN ACROSS ANY TIME YET WHEN HE COULD REFUSE. HIS FEELING IS THAT IF HE DID REFUSE THE EMPLOYEE COULD WALK OUT IF HE WISHED

ANYWAY. HE FURTHER STATED THAT FOR TIME OFF FOR MORE THAN PART OF A SHIFT THEY WOULD HAVE TO GO TO THE FOREMAN FOR THAT PERIOD. HE STATED THERE IS A BUDGET, I.E. A FORECAST OF EXPENSE ITEMS, FOR SUCH THINGS AS REPAIR AND MAINTENANCE OF EQUIPMENT OR OTHER DEPARTMENT MAINTENANCE OR REPLACEMENT OF PARTS, UNDER WHICH HIS DEPARTMENT OPERATES, AND AS TO WHETHER HE IS INVOLVED IN ANY WAY IN THE PREPARATION AND/OR MAINTENANCE OF THAT BUDGET AS IT CONCERNS HIS AREA OR THE DEPARTMENT AS A WHOLE, HE SAID ONLY TO THE EXTENT THAT IT IS HIS RESPONSIBILITY TO KEEP REJECTS, REPAIRS AND SCRAP AT THE MINIMUM AMOUNT POSSIBLE.

6. MR. SEWELL STATED THAT IN HIS CAPACITY AS SET-UP SUPERVISOR HE HAS ATTENDED MEETINGS WITH OTHER MEMBERS OF MANAGEMENT AND IN REGARD TO THE VARIOUS TYPES OF MEETINGS HE HAS ATTENDED WITH OTHERS IN MANAGEMENT, HE SAID THERE IS ONLY ONE TYPE, THIS BEING TOP MANAGEMENT INFORMING THEM OF THE GENERAL PICTURE OF THE OPERATIONS. THIS MEETING OCCURS PERIODICALLY, ROUGHLY TWICE A YEAR, AND BY ROUGHLY HE MEANS OVER THE YEARS THEY HAVE HAD MORE SOME YEARS, LESS OTHER YEARS. CONCERNING THE TYPES OF SUBJECTS THAT ARE DISCUSSED AT THESE MEETINGS, HE SAID THIS IS VERY GENERAL--HOW THEY STAND IN THE MARKET, IF THEY ARE SUFFERING A LOSS OR IF THEY HAVE HAD A GOOD YEAR, SUCH THINGS LIKE THIS OR IF THE PLANT GENERALLY IS GETTING OUT OF HAND WITH SAY SCRAP, THEY ARE TOLD TO PICK IT UP. THOSE IN ATTENDANCE WOULD BE FROM SET-UP SUPERVISORS. HE FURTHER STATED THAT AT THESE MEETINGS THE SUBJECT OF EMPLOYEE MANAGEMENT RELATIONS, ADMINISTRATION OF THE COLLECTIVE AGREEMENT OR NEGOTIATIONS COMING UP OR COMPLETED WERE NEVER DISCUSSED NOR ARE THERE ANY OTHER MEETINGS WITH MANAGEMENT HE ATTENDS CONCERNING THOSE SUBJECTS.

7. MR. SEWELL STATED HE IS AWARE OF THE GRIEVANCE PROCEDURE COVERING EMPLOYEES UNDER HIS DIRECTION AND CONTROL AS PROVIDED FOR IN THE COLLECTIVE AGREEMENT BUT HE DID NOT IN HIS ROLE AS SET-UP SUPERVISOR REPRESENT MANAGEMENT AT ANY STEP OF THE GRIEVANCE PROCEDURE, I.E. ACT AS A COMPANY SPOKESMAN AND ADVISE THE UNION AS TO THE POSITION THE COMPANY IS TAKING AS A RESULT OF HEARING THE GRIEVANCE, NOR DOES HE ATTEND IN ANY OTHER CAPACITY. REGARDING WHETHER, WHERE GRIEVANCES ARISE CONCERNING PEOPLE UNDER HIS DIRECTION AND CONTROL, IS HE ASKED FOR RECOMMENDATIONS AS TO THE POSITION THE COMPANY SHOULD TAKE IN REGARD TO SUCH GRIEVANCES, HE STATED, NO HE NEVER HAS BEEN.

8. THE RESPONDENT COMPANY TAKES THE POSITION THAT THE PERSONS CLASSIFIED AS SET-UP SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS AND THEREFORE IN ACCORDANCE WITH SECTION 1(3)(B) ARE NOT APPROPRIATE FOR INCLUSION IN A UNIT FOR COLLECTIVE BARGAINING.

9. THE APPLICANT UNION CONTENDS THAT THE EMPLOYEES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND THAT THEY ARE BELOW THE RANK OF WHAT IS CONSIDERED THE FIRST LINE OF SUPERVISION IN AN INDUSTRIAL PLANT, NAMELY, THAT OF FOREMAN AND ACCORDINGLY ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT PROPOSED BY THEM.

10. THE EVIDENCE OF THE EXAMINER DISCLOSES, AND IN FACT IT IS NOT IN DISPUTE, THAT THE EMPLOYEES CLASSIFIED AS SET-UP SUPERVISORS ARE BELOW THE RANK OF FOREMAN.

11. WITH THE GREATEST RESPECT FOR CONTRARY OPINION I SUBMIT THAT THE MAJORITY IN THEIR DECISION GAVE TOO NARROW A SCOPE TO THE WORDS 'EXERCISES MANAGERIAL FUNCTIONS' AS CONTAINED IN SECTION 1(3)(B) OF THE ACT. TO FIND THAT PERSONS EXERCISE MANAGERIAL FUNCTIONS HAS THE EFFECT OF DENYING THOSE PERSONS REPRESENTATION BY THE UNION OF THEIR CHOICE AND COLLECTIVE BARGAINING RIGHTS PROVIDED FOR IN THE ACT. THE EVIDENCE IN THIS MATTER DISCLOSES THAT THE SET-UP SUPERVISORS DO IN FACT EXERCISE VERY LIMITED SUPERVISORY DUTIES. I FIND A VERY CLEAR DISTINCTION BETWEEN EXERCISING SUPERVISORY DUTIES AND EXERCISING MANAGERIAL FUNCTIONS AS STATED IN THE ACT.

12. WITH RESPECT I SUBMIT THAT THE MAJORITY DECISION IN THIS MATTER IS AT VARIANCE WITH THE BOARD'S LONG ESTABLISHED RULE OF THUMB THAT A PLANT PERSON CLASSIFIED AS A FOREMAN IS EXCLUDED FROM A PLANT BARGAINING UNIT, THAT A PERSON ABOVE SUCH RANK IS ALSO EXCLUDED AND A PERSON BELOW THAT RANK IS INCLUDED, AND THAT THERE IS A HEAVY ONUS ON THE PARTY SEEKING TO DEPART FROM THIS PATTERN, SEE PRE-CON MURRAY LIMITED, OLRB M.R. AUGUST 1965 P. 328. THE DEPARTURE BY THE MAJORITY FROM THE RULE OF THUMB OUTLINED ABOVE IS SOMEWHAT UNUSUAL IN 1973; IT REFLECTS AN INTERPRETATION OF 'EXERCISES MANAGERIAL FUNCTIONS' THAT IS FAR NARROWER THAN THE BOARD HAS FOUND EVEN IN ITS EARLIEST CASES WHEN THE BOARD WAS FIRST FORMULATING ITS VIEWS ABOUT MANAGERIAL FUNCTIONS. THE BOARD HAS COME SOME DISTANCE FROM ITS EARLIER DECISION IN THE R. McDougall Company Limited Case (1943) O.W.N. 743. THE BOARD HAS MOVED OVER THE YEARS TO REFLECT THE NEW AND EVOLVING INDUSTRIAL RELATIONS SOPHISTICATION THAT NOW RECOGNIZES THE EXISTENCE OF COMPLEX PERSONNEL DEPARTMENTS AND PERSONNEL OFFICERS WITH HIGHLY DEVELOPED SKILLS AND METHODS OF PERSONNEL MANAGEMENT. IN EARLIER DAYS IT WAS UNDERSTANDABLE THAT THE FOREMAN WAS NOT ONLY CONSIDERED AS MANAGEMENT BUT WAS IN FACT THE KING PIN OF THE PLANT EXERCISING IN MOST INSTANCES EXTRAORDINARY MANAGERIAL RESPONSIBILITIES. THE NEW SOPHISTICATES IN PERSONNEL MANAGEMENT EMANATING IN MOST CASES FROM OUR UNIVERSITIES WITH PERSONNEL MANAGEMENT RELATED DEGREES HAVE OF NECESSITY TRIMMED THE EXERCISE OF REAL MANAGERIAL FUNCTIONS NOT ONLY FROM THE FOREMAN BUT FROM MUCH HIGHER-UPS IN THE PLANT. IT IS WITH A REALIZATION OF THIS NEW FACT OF INDUSTRIAL RELATIONS LIFE THAT THE BOARD HAS EVOLVED OVER THE YEARS DECISIONS WHICH REFLECT THE STRIPPING OF POWERS FROM THE ONCE GREAT KING PIN OF THE PLANT, THE FOREMAN, TO OTHERS MORE HIGHLY PLACED.

13. THE WORDS 'WHO IN THE OPINION OF THE BOARD EXERCISES MANAGERIAL FUNCTIONS' IN SECTION 1(3)(B) OF THE ACT ALLOW THIS BOARD TO RECOGNIZE THE FACTS OF LIFE IN MODERN INDUSTRIAL LABOUR RELATIONS AND CONSEQUENTLY THE BOARD HAS IN THE PAST, AND CONTINUES TO THIS PRESENT TIME, VIEWED THOSE WORDS IN THE LEGISLATION WITH A LIBERAL AND PROGRESSIVE INTERPRETATION PARTICULARLY IN THE CONSTRUCTION INDUSTRY AND IN THE PRINTING TRADES WHERE IT IS A COMMON PRACTICE TO REFLECT THE PECULIARITIES OF THOSE INDUSTRIES BY INCLUDING WORKING FOREMEN IN THOSE BARGAINING UNITS. IT ESCAPES ME WHY WE WOULD NOT NOW REFLECT THE NEW PECULIARITIES OF THE EVOLVING PLANT BARGAINING UNITS BY HAVING A SECOND HARD LOOK AT THE FOREMAN CLASSIFICATION IN THE PLANTS. TITLES ALONE ARE NOT OF MUCH ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE; HENCE THE BOARD'S

ESTABLISHED PRACTICE IS TO IGNORE TITLES AS SUCH AND SEEK OUT BY WAY OF AN EXAMINER'S REPORT THE DUTIES AND RESPONSIBILITIES OF PERSONS WHOSE STATUS IS IN QUESTION.

14. IN THE INSTANT CASE WE ARE FORTUNATE IN HAVING FOR OUR CONSIDERATION AN EXCELLENTLY PREPARED EXAMINER'S REPORT INTO THE DUTIES AND RESPONSIBILITIES OF THE SET-UP SUPERVISORS. AFTER A CAREFUL STUDY OF THE REPORT AND EQUALLY CAREFUL CONSIDERATION OF THE SUBMISSIONS OF THE PARTIES ON THE QUESTION OF THE EXERCISE OF MANAGERIAL FUNCTIONS OF THESE EMPLOYEES, IT IS CRYSTAL CLEAR TO ME THAT THE EMPLOYEES DO NOT EXERCISE MANAGERIAL FUNCTIONS; INDEED THE REPORT ESTABLISHES ONLY THAT THESE EMPLOYEES HAVE VERY LIMITED SUPERVISORY DUTIES. THE EXAMINER'S REPORT AT BEST ESTABLISHES THAT THE SET-UP SUPERVISOR IS A CONDUIT BETWEEN THE PERSONS HE SUPERVISES AND HIS IMMEDIATE SUPERIOR, THE FOREMAN, AND THAT HE IS IN REALITY PERFORMING A REPORTING FUNCTION. THIS FUNCTION SERVES A USEFUL PURPOSE IN A PLANT OF THIS SIZE, HOWEVER, IT IS STRETCHING A VERY LONG BOW TO EQUATE THIS REPORTING FUNCTION WITH THE EXERCISE OF MANAGERIAL FUNCTIONS. THESE SET-UP SUPERVISORS DO NOT HAVE THE DISCRETION OR TYPE OF RESPONSIBILITY THAT ONE ENVISIONS AS BEING MANAGERIAL.

15. IN THE EXAMINER'S REPORT AT PARAGRAPH 39 THE WITNESS SEWELL REFERS TO A MEETING HE ATTENDED WITH 'TOP MANAGEMENT'. IT IS OBVIOUS FROM THIS REMARK THAT THERE ARE RANKS OF 'MANAGEMENT'. IN MANY MODERN INDUSTRIAL RELATIONS PUBLICATIONS IT IS COMMON TO REFER TO 'TOP', 'MIDDLE' AND 'LOWER' ECHELONS OF MANAGEMENT. SINCE TITLES OF THEMSELVES HAVE LITTLE MEANING ONE HAS TO SPECULATE HOW THE MANAGEMENT PIE IS SPLIT UP AMONG THE VARIOUS RANKS OR DESIGNATIONS. IT IS OBVIOUS IN THE INSTANT CASE THAT SINCE THE MAJORITY OF SET-UP SUPERVISORS HAVE JOINED THE UNION OF THEIR CHOICE AND FEEL THE NEED FOR COLLECTIVE BARGAINING THAT SOMEHOW THAT ACTION OR DESIRE DOES NOT JELL WITH THE NOTION THAT THESE PEOPLE THEMSELVES BELIEVE THEY ARE MANAGERIAL OR THAT THEY EXERCISE MANAGERIAL FUNCTIONS.

16. IT IS NOT IN DISPUTE THAT THESE PEOPLE EXERCISE CERTAIN SUPERVISORY FUNCTIONS. THE EXERCISE OF SUCH FUNCTIONS SETS THESE PEOPLE APART FROM THOSE THAT THEY SUPERVISE; THEY HAVE AS A CONSEQUENCE A DIFFERENT COMMUNITY OF INTEREST FROM OTHER PLANT EMPLOYEES IN MUCH THE SAME WAY THAT OFFICE AND TECHNICAL EMPLOYEES HAVE A DIFFERENT COMMUNITY OF INTEREST FROM THE PLANT EMPLOYEES. THE URGENT NEED FOR COLLECTIVE BARGAINING ON THE PART OF SUPERVISORY PERSONS AND INDEED LOWER RANK DESIGNATED 'MANAGERIAL' PERSONS IS COMMON KNOWLEDGE THROUGH THE PUBLIC DISCLOSURES OF THE PLIGHT OF SUCH PERSONS AS BECKER MILK MANAGERS AND MAC'S MILK MANAGERS. IN TOO MANY INSTANCES MANAGERIAL CLASSIFICATION IN BUSINESS REPRESENTS NOTHING MORE THAN GLORIFIED TITLES GIVEN TO EMPLOYEES FOR EXPLOITATION PURPOSES SINCE THE SHAM OF MANAGERIAL RESPONSIBILITY DEPRIVES THESE PEOPLE OF REPRESENTATION BY THE UNION OF THEIR CHOICE.

17. UNIONIZED EMPLOYEES THROUGH THE PROTECTION OF LAW AND THE EXERCISE OF COLLECTIVE BARGAINING SKILLS AND STRENGTH HAVE EVOLVED FROM THE 'SERVANT' CLASSIFICATION. THE REMAINING OLD TIME MASTER-SERVANT RELATIONSHIPS EXIST ONLY BETWEEN UNENLIGHTENED EMPLOYERS AND THEIR UNFORTUNATE UNORGANIZED

EMPLOYEES AND BETWEEN 'TOP' MANAGEMENT, THE 'MASTER' AND THEIR 'SERVANTS' THE MIDDLE AND LOWER ECHELON DESIGNATED MANAGEMENT TYPES.

18. TO FIND THAT PERSONS EXERCISING SUPERVISORY FUNCTIONS ARE IN OUR OPINION EXERCISING MANAGERIAL FUNCTIONS IS NOT IN KEEPING WITH THE FACTS OF LIFE TODAY IN OUR HIGHLY DEVELOPED INDUSTRIAL RELATIONSHIPS. TO DEPRIVE SUPERVISORY PEOPLE OF COLLECTIVE BARGAINING IS TO CONDEMN THEM TO A CONTINUED MASTER-SERVANT RELATIONSHIP AT A TIME WHEN THE UNIONIZED PEOPLE THEY SUPERVISE HAVE HAD THAT OLD TIME RELATIONSHIP BONDAGE LIFTED FROM THEIR LIVES.

19. SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT WHEREIN IT USES THE WORDS 'WHO IN THE OPINION OF THE BOARD EXERCISES MANAGERIAL FUNCTIONS' IS A WIDE SECTION OF THE ACT AND ALLOWS FOR UP TO DATE OPINIONS FORMED BY AN AWARENESS OF CURRENT MODERN, LIBERAL AND PROGRESSIVE DEVELOPMENTS IN THE FIELD OF INDUSTRIAL RELATIONS. IN THE RESULT I WOULD FIND THAT THE SET-UP SUPERVISORS WHO ARE THE SUBJECT OF THIS APPLICATION DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. I WOULD FURTHER FIND THAT THE UNIT PROPOSED BY THE APPLICANT IS AN APPROPRIATE BARGAINING UNIT FOR COLLECTIVE BARGAINING PURPOSES AND I WOULD CERTIFY THE APPLICANT FOR THE UNIT REQUESTED.

3659-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. SMITHS FALLS PUBLIC HOSPITAL (CHAMBERS MEMORIAL) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT; D. ALAN PAGE AND C. A. ROUSE FOR THE RESPONDENT; ADRIE VAN ULDEN FOR THE OBJECTORS.

DECISION OF THE BOARD: JULY 11, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH, ON THEIR ORIGINAL SUBMISSIONS, THE APPLICANT AND THE RESPONDENT PROPOSED SIMILAR BARGAINING UNITS COMPRISING ALL EMPLOYEES WITH VIRTUALLY IDENTICAL EXCEPTIONS.

2. THE OBJECTORS, WHO IDENTIFIED THEMSELVES AS THE SMITHS FALLS PUBLIC HOSPITAL REGISTERED NURSING ASSISTANT ASSOCIATION (HEREINAFTER CALLED THE "ASSOCIATION"), OBJECT TO THE INCLUSION IN THE BARGAINING UNIT OF REGISTERED NURSING ASSISTANTS (R.N.A.'s), AIDES, ORDERLIES AND WARD CLERKS WHICH CLASSIFICATIONS COMPRISE THE MEMBERSHIP OF THE ASSOCIATION.

3. THE REASONS ADVANCED BY THE ASSOCIATION ARE AS FOLLOWS:

(A) WE BELONG TO THE ONTARIO ASSOCIATION OF REGISTERED

NURSING ASSISTANTS, WHICH IS A RECOGNIZED ASSOCIATION. THE FEE IS \$12.00 A YEAR.

WITHIN A SHORT TIME THE ONTARIO ASSOCIATION OF REGISTERED NURSING ASSISTANTS WILL BECOME THE OFFICIAL BARGAINING AGENT FOR R.N.A.'S, OR UNION; SOME PEOPLE MAY WANT TO CALL IT THAT. THE ADDRESS OF OUR ASSOCIATION IS SUITE 401, 30 BLOOR STREET WEST, TORONTO, ONTARIO. M4W 1A2.

- (B) WE HAVE TO RE-REGISTER WITH THE COLLEGE OF NURSES IN ONTARIO EACH YEAR AT A \$6.00 FEE. WE ARE A FULL BODY OF THE COLLEGE OF NURSES. WE ALL HAD A HOSPITAL BASED TRAINING, GRADUATED AND WROTE AN EXAMINATION TO BE ABLE TO REGISTER WITH THE COLLEGE OF NURSES, THEREFORE, WE FEEL WE SHOULD BE CLASSIFIED AS "PROFESSIONALS". WE ARE "NURSES" AND ARE GUIDED BY OUR OWN STANDARDS AND PRINCIPLES. THE UNION CLASSIFIES US AS "NON-PROFESSIONAL".
- (C) WE FEEL IF WE ARE INCLUDED IN THE UNION OF OPERATING ENGINEERS, THAT THERE IS ALWAYS THE PROSPECT OF A STRIKE AND OUR CONSTITUTION STATES THAT WE CANNOT STRIKE UNDER ANY CIRCUMSTANCES.
- (D) FURTHERMORE, THERE IS NOTHING THE UNION CAN DO FOR US THAT WE DO NOT ALREADY HAVE.

4. AT THE CONCLUSION OF THE SUBMISSIONS OF THE ASSOCIATION, THE APPLICANT AND THE RESPONDENT STATED THAT THEY WOULD AGREE TO THE EXCLUSIONS SOUGHT BY THE ASSOCIATION.

5. THE BOARD HAS A LONG ESTABLISHED PRACTICE OF INCLUDING REGISTERED NURSING ASSISTANTS IN ALL EMPLOYEE HOSPITAL BARGAINING UNITS. IN THE RIVERSIDE HOSPITAL OF OTTAWA CASE, (1971) OLRB REP. JANUARY P. 10, THE MAJORITY OF THE BOARD UPHELD THE PRACTICE IN THE FACE OF THE AGREEMENT OF THE PARTIES TO EXCLUDE THE R.N.A.'S.

6. THE REASONS GIVEN BY THE MAJORITY IN THAT CASE, AS UNDERLYING THE LONG ESTABLISHED PRACTICE, WERE COMMUNITY OF INTEREST AND A DESIRE ON THE PART OF THE BOARD TO AVOID FRAGMENTATION OF BARGAINING UNITS. THE BOARD, ACCORDINGLY, REJECTED THE PROPOSAL AS ONE DOING VIOLENCE TO ITS POLICY. THE PARTIES, IN THE PRESENT INSTANCE, HOWEVER, ARE PROPOSING THE EXTENTION OF THE EXEMPTION SOUGHT IN THE RIVERSIDE CASE (SUPRA) SO AS TO INCLUDE, IN ADDITION TO REGISTERED NURSING ASSISTANTS (R.N.A.'S), AIDES, ORDERLIES AND WARD CLERKS.

7. FULL AND CAREFUL CONSIDERATION HAS BEEN GIVEN BY THE BOARD TO THE PROPOSALS OF THE ASSOCIATION AND TO THE ACQUIESCENCE THEREIN, EXPRESSED AT THE HEARING, BY THE OTHER PARTIES. THE BOARD RECOGNIZES THE FACT THAT THE R.N.A.'S ARE BY TRAINING AND BY STATUTE AFFILIATED IN INTEREST WITH THE PROFESSIONAL NURSES AND THE COLLEGE OF NURSES. NO APPLICATION HAS EVER BEEN MADE, HOWEVER, TO ATTACH THEM TO BARGAINING UNITS SOUGHT BY THE NUMEROUS ASSOCIATIONS OF REGISTERED AND GRADUATE NURSES WHICH HAVE APPLIED FOR CERTIFICATION TO THE BOARD. THESE HAVE BEEN CONFINED, IN ACCORDANCE WITH THEIR CONSTITUTIONS, TO THE NURSING PROFESSION AS SUCH.

8. THE FOREGOING FACTS, HOWEVER, HAVE NOT PREVIOUSLY BEEN FOUND BY THE BOARD TO BEAR SUFFICIENT WEIGHT TO COUNTERBALANCE THE POLICY AGAINST FRAGMENTATION OF BARGAINING UNITS IN CASES WHERE THE CONSIDERATION HAS BEEN CONFINED TO A REQUEST FOR SEPARATE UNITS FOR R.N.A.'S. THERE IS NOTHING IN THE COMBINATION OF R.N.A.'S WITH AIDES, ORDERLIES AND WARD CLERKS AS PROPOSED IN THE PRESENT INSTANCE WHICH WOULD INDUCE THE BOARD TO ALTER OR DESTROY THE CONSISTENCY OF ITS POLICY.

9. THE BOARD'S RELUCTANCE TO DEPART FROM A LONG EXISTENT POLICY IS BASED NOT ONLY UPON THE REASONS UNDERLYING ITS INITIATION, BUT ALSO UPON THE FACT THAT IT HAS BECOME AN ESTABLISHED GUIDELINE FOR ALL PARTIES CONCERNED WITH THE ORGANIZATION OF HOSPITAL BARGAINING UNITS, AN AREA, INCIDENTALLY, RECOGNIZED BY THE BOARD AS ONE UNIQUELY CONDUCTIVE TO THE MULTIPLICATION AND FRAGMENTATION OF BARGAINING UNITS.

10. THE BOARD THEREFORE, FOLLOWING THE DECISION IN THE RIVERSIDE HOSPITAL OF OTTAWA CASE (SUPRA), IS UNABLE TO ACCEPT THE PROPOSED BARGAINING UNIT.

11. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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16. THE MATTER IS REFERRED TO THE REGISTRAR.

3908-73-R: NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL (APPLICANT) v. OTTAWA GENERAL HOSPITAL (RESPONDENT) v. CSAO NATIONAL (INC.) (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: MICHAEL E. ROYCE AND CAROLYN FERGUSON FOR THE APPLICANT; D. CHURCHILL-SMITH, R. RIVET AND L. BERTUZZI FOR THE RESPONDENT; NO ONE FOR THE INTERVENER; PENNY SARGENT AND MICHELE SIMONEAU FOR THE OBJECTORS.

DECISION OF THE BOARD: JULY 16, 1973.

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2. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED OF ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE. THE RESPONDENT WOULD CONFINE THE UNIT TO ALL "LAY" REGISTERED AND GRADUATE NURSES. THAT IS TO SAY, THE RESPONDENT WOULD EXCLUDE THOSE NURSES WHO BELONG TO A RELIGIOUS ORDER, WHICH IN THIS CASE IS THE SISTERS OF CHARITY. THE RESPONDENT WOULD ALSO DESCRIBE THE NURSES IN TERMS OF THOSE "ENGAGED IN NURSING CARE" AS OPPOSED TO "THOSE ENGAGED IN A NURSING CAPACITY". THE RESPONDENT, HOWEVER, AGREES THAT THE LINE OF MANAGEMENT IS HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE. THE RESPONDENT IS ALSO ASKING FOR THE EXCLUSION OF NURSES EMPLOYED IN THE EMPLOYEES' HEALTH SERVICE, NURSES ON THE "ON CALL TEAM", NURSES REPLACING EMPLOYEES ON LEAVE OF ABSENCE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA.

3. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED JUNE 5, 1973 IN THE ST. JOSEPH HOSPITAL OF SUDBURY CASE BOARD FILE NO. 3589-73-R, THE BOARD IS OF THE OPINION THAT THOSE NURSES BELONGING TO THE RELIGIOUS ORDER DO NOT HAVE A SUFFICIENT COMMUNITY OF INTEREST WITH THE "LAY" NURSES TO BE INCLUDED IN THE BARGAINING UNIT. FURTHER, WE SEE NO REASON TO DEPART FROM THE MORE USUAL LANGUAGE PROPOSED BY THE APPLICANT THAT THE UNIT BE DESCRIBED IN TERMS OF THOSE NURSES "ENGAGED IN A NURSING CAPACITY". ONLY ONE NURSE FALLS WITHIN THE CLASSIFICATION OF "NURSES EMPLOYED IN THE EMPLOYEES' HEALTH SERVICES". ACCORDING TO THE RESPONDENT SHE DEALS WITH THE TREATMENT OF THE STAFF OF THE HOSPITAL AND HAS ACCESS TO THE PERSONNEL RECORDS OF THE HOSPITAL STAFF. NOTWITHSTANDING THAT THE NURSE IN QUESTION TENDS THE HEALTH NEEDS OF THE STAFF, HER COMMUNITY OF INTEREST IS ESSENTIALLY THE SAME AS THOSE NURSES ENGAGED IN PATIENT CARE AND ACCORDINGLY WE SEE NO REASON TO EXCLUDE HER FROM THE BARGAINING UNIT ON THAT BASIS. FURTHER, SIMPLY BY VIRTUE OF THE FACT THAT THE SAME NURSE HAS ACCESS TO THE PERSONNEL RECORDS OF THE HOSPITAL STAFF WE DO NOT FIND THAT SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND THEREFORE SHOULD BE EXCLUDED FROM THE UNIT ON THIS GROUND. WITH REGARD TO NURSES "ON CALL" OR REPLACING EMPLOYEES ON A LEAVE OF ABSENCE, THEY CAN PROPERLY BE DESCRIBED AS CASUAL EMPLOYEES. EMPLOYEES EITHER FALL IN THE CLASSIFICATION OF "FULL-TIME" OR "PART-TIME" EMPLOYEES. THE BOARD HAS NOT RECOGNIZED A SEPARATE CLASSIFICATION OF "CASUAL" EMPLOYEES. PROVIDED EMPLOYEES ARE NOT IN THE PART-TIME

CLASSIFICATION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK", AND THEY WERE AT WORK ON THE DATE OF APPLICATION OR WITHIN A PERIOD OF A MONTH BEFORE AND A MONTH AFTER THE DATE OF APPLICATION, THEY ARE INCLUDED IN THE FULL-TIME UNIT FOR PURPOSES OF THE COUNT (SEE SYDENHAM DISTRICT HOSPITAL CASE OLRB M.R. MAY 1967 P. 135). ACCORDINGLY, THE BOARD SEES NO REASON TO EXCLUDE NURSES "ON CALL" OR REPLACING NURSES ON A LEAVE OF ABSENCE FROM THE UNIT. SINCE THE RESPONDENT DOES HAVE "PART-TIME" EMPLOYEES IN THE CLASSIFICATION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK" AND HAS ASKED FOR THIS EXCLUSION FROM THE "FULL-TIME" UNIT, THE BOARD, FOLLOWING ITS USUAL PRACTICE OF MAKING SUCH AN EXCLUSION IN THESE CIRCUMSTANCES WHEN IT IS SOUGHT BY EITHER PARTY, IS PREPARED TO ACCEDE THE REQUEST OF THE RESPONDENT. THE APPLICANT, HOWEVER, IS ENTITLED TO A SEPARATE BARGAINING UNIT COMPOSED OF THE "PART-TIME" NURSES EMPLOYED BY THE RESPONDENT.

4. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD FINDS THAT ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT OTTAWA ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER CALLED BARGAINING UNIT #1.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #1.

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11. THE MATTER IS REFERRED TO THE REGISTRAR.

3971-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CARAVELLE FOODS (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: VINCENT GENTILE AND GEORGE ELLIS FOR THE APPLICANT; S. D. BOWMAN AND PATRICK HAYES FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 16, 1973.

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3. THE REPRESENTATIVE OF THE RESPONDENT SUBMITTED AT THE HEARING THAT THE RESPONDENT WAS ENGAGED IN THE "BUILD-UP" OF ITS WORK FORCE AND THAT ACCORDINGLY THE BOARD SHOULD DEFER MAKING ANY DISPOSITION ON THE

INSTANT APPLICATION UNTIL THE "BUILD-UP" HAS TAKEN PLACE. THE EVIDENCE IS THAT THE RESPONDENT COMMENCED ITS PRODUCTION OPERATIONS ON MAY 25, 1973. AS OF JUNE 18, 1973, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, THE RESPONDENT HAD IN ITS EMPLOY 14 EMPLOYEES WHO FALL WITHIN THE BARGAINING UNIT, ALL OF WHOM ARE IN THE CLASSIFICATION OF "OPERATOR". THE RESPONDENT HAS SOME EQUIPMENT ON ORDER BUT THE EXACT DATE OF ITS EXPECTED DELIVERY IS SOMEWHAT UNCERTAIN. PATRICK HAYES, THE PLANT MANAGER OF THE RESPONDENT, TESTIFIED, HOWEVER, THAT HE ANTICIPATED THAT WHEN ALL OF THE EQUIPMENT IS INSTALLED THE RESPONDENT WOULD HAVE FROM 25 TO 30 OPERATORS IN ITS EMPLOY AND THAT THEY WOULD ALL BE HIRED BY THE END OF SEPTEMBER 1973.

4. HAVING REGARD TO THE FACT THAT THE RESPONDENT HAD ALREADY EMPLOYED APPROXIMATELY HALF OF ITS ANTICIPATED WORK FORCE AS OF JUNE 18, SOME THREE WEEKS PRIOR TO THE HEARING OF THE APPLICATION, AND THE EVIDENCE THAT THE HIRING OF ADDITIONAL STAFF IS CONTINGENT ON SOMEWHAT UNCERTAIN DELIVERY DATES OF NEW EQUIPMENT, THE BOARD IS OF THE OPINION THAT THIS IS NOT A CASE IN WHICH IT SHOULD DEFER MAKING A DISPOSITION OF THE INSTANT APPLICATION. THE REQUEST OF THE REPRESENTATIVE OF THE RESPONDENT ACCORDINGLY IS DENIED.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4081-73-U: THE WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1946 AND DAVID NOBLE (RESPONDENTS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. M. MINSKY, J. BERKON AND H. K. WELLER FOR THE APPLICANT; HAROLD F. CALEY AND D. L. NOBLE FOR THE RESPONDENTS.

DECISION OF THE BOARD: JULY 25, 1973.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

2. AT THE COMMENCEMENT OF THE HEARING, THE BOARD ENTERTAINED THE SUBMISSIONS OF COUNSEL ON THE MATTERS RAISED BY COUNSEL FOR THE RESPONDENTS CONCERNING WHETHER THE RESPONDENTS HAD BEEN GIVEN SUFFICIENT PARTICULARS OF THE ALLEGATIONS MADE BY THE APPLICANT AND ON WHETHER THE APPLICATION DISCLOSED AN OFFENCE UNDER THE LABOUR RELATIONS ACT. HAVING REGARD TO THE MATERIAL BEFORE IT AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD RULED THAT THE APPLICANT HAD SUPPLIED SUFFICIENT PARTICULARS TO THE RESPONDENTS AND THAT THE APPLICANT HAD MADE SUFFICIENT ALLEGATIONS IN THIS APPLICATION SO AS TO CAUSE THE BOARD TO ENTERTAIN THIS APPLICATION.

3. THE PARTIES AGREED THAT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1946 (HEREINAFTER REFERRED TO AS "LOCAL 1946") AND STONEYBROOK DEVELOPMENTS LIMITED (HEREINAFTER REFERRED TO AS "STONEYBROOK") ARE PARTIES TO A SUBSISTING COLLECTIVE AGREEMENT WHICH COVERED CARPENTERS IN THE EMPLOY OF STONEYBROOK AT THE WHITE OAKS SHOPPING PLAZA LOCATED ON WELLINGTON STREET, LONDON (HEREINAFTER REFERRED TO AS THE "PLAZA") AT ALL MATERIAL TIMES.

4. THE EVIDENCE ESTABLISHED THAT AT ALL MATERIAL TIMES, DANILO MARCUZ WAS THE PRESIDENT OF SUBURBAN PLASTERING CO. LTD. (HEREINAFTER REFERRED TO AS "SUBURBAN") AND THAT SUBURBAN WAS BOUND BY A COLLECTIVE AGREEMENT WITH THE APPLICANT EFFECTIVE FROM APRIL 12, 1972 UNTIL APRIL 30, 1974.

5. DURING JULY 1973, SUBURBAN ENTERED INTO A CONTRACT WITH MONAHAN CONTRACT CO-ORDINATION CORPORATION (HEREINAFTER REFERRED TO AS "MONAHAN") TO PERFORM CERTAIN WORK AT THE LOCATION OF WALKER STORES LIMITED IN THE PLAZA. THE WORK TO BE PERFORMED BY SUBURBAN WAS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN SUBURBAN AND THE APPLICANT. THE GENERAL MANAGER AT THE PLAZA WAS RUSTGATE CONSTRUCTION LIMITED (HEREINAFTER REFERRED TO AS "RUSTGATE").

6. ON MONDAY, JULY 9, 1973, SUBURBAN HAD TWO EMPLOYEES WORKING AT THE PLAZA PURSUANT TO ITS CONTRACT WITH MONAHAN. AT ABOUT 9.30 A.M. ON WEDNESDAY, JULY 11, 1973, DANILO MARCUZ SPOKE TO JOHN ROBINSON WHO AT ALL MATERIAL TIMES WAS THE PROJECT MANAGER OF RUSTGATE. ROBINSON TOLD MARCUZ THAT HE (MARCUZ) SHOULD "PULL OFF THE JOB UNTIL WE GET THINGS STRAIGHTENED AWAY". JOHN ROBINSON ADDED THAT HE COULD NOT AFFORD ANY DELAY ON THE JOB WHICH WOULD BE CAUSED IF OTHER TRADES WOULD BE PULLED OFF OR WALK OFF THE JOB. JOHN ROBINSON DID NOT TELL DANILO MARCUZ WHAT THE PROBLEM WAS AND THE LATTER TOLD THE FORMER THAT HE WOULD "FIND OUT WHAT THE SCORE WAS".

7. THE TWO EMPLOYEES OF SUBURBAN TESTIFIED THAT THEY WERE LATHERS BY TRADE AND MEMBERS OF THE APPLICANT, THAT THEY COMMENCED WORK AT THE PLAZA ON MONDAY, JULY 9, 1973 AND THAT THEY HAD A CONVERSATION ON THAT DATE WITH THE SHOP STEWARD FOR THE CARPENTERS WHO ASKED TO SEE THEIR UNION CARDS. THE SHOP STEWARD ASKED THESE TWO EMPLOYEES IF THEY BELONGED TO THE CARPENTERS' UNION, AND THEY REPLIED THAT THEY DID NOT BUT DID BELONG TO THE LATHERS' UNION. AT APPROXIMATELY 4.00 P.M. ON TUESDAY, JULY 10, 1973, DAVID NOBLE, WHO WAS IDENTIFIED AS THE BUSINESS AGENT OF LOCAL 1946, CAME ON TO THE JOB SITE AND ASKED WHO HAD PUT UP THE WALL HOLDING AROUND THE WALL FOR THE T-BAR CEILING. UPON ASCERTAINING THAT SUBURBAN'S TWO EMPLOYEES HAD DONE THIS, DAVID NOBLE SAID THAT THEY COULD NOT DO THAT AND THEN WENT AWAY.

8. ON WEDNESDAY, JULY 11, 1973, JOHN ROBINSON, AND DAVID NOBLE CAME TO THE LOCATION WHERE SUBURBAN'S TWO EMPLOYEES WERE WORKING. JOHN ROBINSON ASKED THESE TWO EMPLOYEES TO STOP FOR A COUPLE OF HOURS UNTIL THINGS COULD BE STRAIGHTENED OUT AND ADDED THAT IF THEY DID NOT LEAVE

THE JOB, DAVID NOBLE WAS GOING TO PULL THE MEN OFF THE JOB. DAVID NOBLE DID NOT INDICATE DISAGREEMENT WITH THIS STATEMENT.

9. JOHN ROBINSON TESTIFIED THAT RUSTGATE HAS A MANAGEMENT CONTRACT WITH STONEYBROOK WHICH IS THE GENERAL MANAGER AT THE PLAZA AND THAT STONEYBROOK HAD BETWEEN TEN AND FIFTEEN CARPENTERS IN ITS EMPLOY AT THE PLAZA DURING THE WEEK COMMENCING MONDAY, JULY 9, 1973. HE GAVE EVIDENCE THAT ON TUESDAY, JULY 10, HE RECEIVED A TELEPHONE CALL FROM A MR. ALLISON WHO IS THE SUPERVISOR FOR STONEYBROOK'S CARPENTERS AT THE PLAZA. ALLISON INFORMED JOHN ROBINSON OF PROBLEMS AT THE WALKER STORE WHICH HAD TO DO WITH THE CARPENTERS. THE WITNESS GAVE EVIDENCE THAT ANOTHER EMPLOYER KNOWN AS ACTPAR ALSO EMPLOYED CARPENTERS AT THE PLAZA DURING THE WEEK COMMENCING JULY 9, 1973.

10. THE WITNESS INFORMED THE BOARD THAT ON WEDNESDAY, JULY 11, 1973, HE SPOKE TO DANILO MARCUZ AND ASKED HIM NOT TO CONTINUE WORK ON THE WALKER STORE IN THE PLAZA BECAUSE HE HAD BEEN TOLD BY DAVID NOBLE THAT IF THE WORK CONTINUED IN THE WALKER STORE BY SUBURBAN'S EMPLOYEES, THEN THE CARPENTERS ON THE PLAZA SITE WOULD LEAVE. AS A RESULT OF THIS CONVERSATION, SUBURBAN STOPPED WORKING AT THE WALKER STORE AND HAS NOT WORKED THERE SINCE. JOHN ROBINSON TESTIFIED THAT DAVID NOBLE HAD SAID THAT THE WORK PERFORMED BY SUBURBAN'S TWO EMPLOYEES AT THE WALKER STORE IN THE PLAZA WAS CARPENTERS' WORK AND THAT IF THE LATTERS DID THE WORK THEN THE CARPENTERS WOULD LEAVE THE JOB. THEREUPON, JOHN ROBINSON TOLD DAVID NOBLE THAT THE LATTERS EMPLOYED BY SUBURBAN WOULD NOT BE PERMITTED TO DO THE WORK IN QUESTION UNTIL IT WAS RESOLVED.

11. ROBERT PETERS, THE BUSINESS AGENT OF LOCAL 360 OF THE WOOD WIRE AND METAL LATHERS' INTERNATIONAL UNION IN LONDON TESTIFIED THAT ON WEDNESDAY, JULY 11, 1973, AT APPROXIMATELY 9.45 A.M., HE HAD A CONVERSATION WITH DAVID NOBLE. HE INFORMED THE BOARD THAT NOBLE STATED THAT HE DID NOT WANT THE APPLICANT ON THE JOB AND THAT IF THEY WENT BACK TO WORK, HE (NOBLE) WOULD REMOVE HIS WORK FORCE. ROBERT PETERS GAVE EVIDENCE THAT HE ASKED DAVID NOBLE IF IT WAS LEGAL AND THAT DAVID NOBLE REPLIED "I'LL DO IT ANYWAY".

12. THE PARTIES ALSO ARGUED THAT AN EMPLOYER KNOWN AS ACTPAR ALSO HAD A SUBSISTING COLLECTIVE AGREEMENT WITH LOCAL 1946 WHICH COVERED CARPENTERS EMPLOYED AT THE PLAZA AT ALL MATERIAL TIMES.

13. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT DAVID NOBLE ON JULY 11, 1973 THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OF THE CARPENTERS WHO WERE EMPLOYEES OF STONEYBROOK DEVELOPMENTS LIMITED AND ACTPAR FOR THE PURPOSE OF COMPELLING SUBURBAN TO CEASE TO EMPLOY MEMBERS OF THE APPLICANT ON ITS JOB AT THE PLAZA. HAVING REGARD TO THE FACT THAT DAVID NOBLE IS AN OFFICIAL OF LOCAL 1946 AND TO THE PROVISIONS OF SECTION 88(2) OF THE LABOUR RELATIONS ACT, LOCAL 1946 IS ALSO DEEMED TO BE RESPONSIBLE ON JULY 11, 1973 FOR THE THREAT TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE AS MENTIONED IN THIS PARAGRAPH.

14. THE BOARD FINDS THAT THE PREREQUISITE CONDITIONS TO ITS EXERCISING ITS AUTHORITY UNDER SECTION 123 OF THE LABOUR RELATIONS ACT HAVE BEEN SATISFIED.

15. HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD DEEMS IT ADVISABLE AND HEREBY MAKES THE FOLLOWING DIRECTION:

- (1) THAT THE RESPONDENTS, THEIR RESPECTIVE AGENTS, OFFICERS, OFFICIALS, SERVANTS, EMPLOYEES, REPRESENTATIVES, SUBSTITUTES AND ALL OTHER PERSONS ACTING FOR AND ON THEIR BEHALF REFRAIN FROM:

I. THREATENING STONEYBROOK DEVELOPMENTS LIMITED OR ANY OF ITS OFFICERS, OFFICIALS, AGENTS, REPRESENTATIVES OR EMPLOYEES;

II. THREATENING SUBURBAN PLASTERING Co. LTD. OR ANY OF ITS OFFICERS, OFFICIALS AGENTS, REPRESENTATIVES OR EMPLOYEES;

WITH AN UNLAWFUL STRIKE OF MEMBERS OF THE RESPONDENT TRADE UNION EMPLOYED BY STONEYBROOK DEVELOPMENTS LIMITED AND/OR OTHER EMPLOYERS ENGAGED AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO, WITH THE VIEW, PURPOSE, MOTIVE OR INTENTION OF PREVENTING MEMBERS OF THE APPLICANT EMPLOYED BY SUBURBAN PLASTERING Co. LTD. AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO, FROM PERFORMING THE WORK IN DISPUTE WHICH HAS BEEN ASSIGNED TO THEM.

- (2) AUTHORIZING, COUNSELLING, PROCURING, SUPPORTING OR ENCOURAGING AN UNLAWFUL STRIKE OF MEMBERS OF THE RESPONDENT TRADE UNION EMPLOYED BY STONEYBROOK DEVELOPMENTS LIMITED AND/OR OTHER EMPLOYERS ENGAGED AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO, WITH THE VIEW, PURPOSE, MOTIVE OR INTENTION OF PREVENTING MEMBERS OF THE APPLICANT EMPLOYED BY SUBURBAN PLASTERING Co. LTD. AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO, FROM PERFORMING THE WORK IN DISPUTE WHICH HAS BEEN ASSIGNED TO THEM WITH THE PURPOSE, MOTIVE OR INTENTION AS AFORESAID.

- (3) INTERFERING WITH THE MEMBERS OF THE APPLICANT EMPLOYED BY SUBURBAN PLASTERING Co. LTD. AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO.

- (4) PREVENTING MEMBERS OF THE APPLICANT EMPLOYED BY SUBURBAN PLASTERING CO. LTD. AT THE WHITE OAK SHOPPING PLAZA, WELLINGTON STREET, LONDON, ONTARIO, FROM PERFORMING THE WORK ASSIGNED TO THEM.

3417-72-JD: OTTAWA TYPOGRAPHICAL UNION, LOCAL 102 (COMPLAINANT) V. THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED, AND OTTAWA STEREO-TYPERS AND ELECTROTYPERS UNION, LOCAL 50, I.S. AND E.U. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: J. P. NELLIGAN, RAY HOULIHAN AND F. CREMONESI FOR THE COMPLAINANT; C. A. MORLEY AND S. G. ROBERTS FOR THE RESPONDENT COMPANY; MAURICE W. WRIGHT AND DENNIS MOORE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JULY 30, 1973.

. . .

2. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.

3. THE INSTANT COMPLAINT AROSE AS A RESULT OF THE DECISION OF THE RESPONDENT COMPANY (HEREINAFTER REFERRED TO AS THE EMPLOYER) TO CONVERT ITS PRESENT COMPOSING ROOM OPERATIONS FROM A HOT METAL TO A COLD METAL PHOTOCOMPOSITION PROCESS.

4. UNDER THE EXISTING HOT METAL PROCESS, THE COMPOSING ROOM STAFF, REPRESENTED BY THE COMPLAINANT (HEREINAFTER REFERRED TO AS THE TYPOGRAPHICAL UNION), USING LINOTYPE MACHINES, SET COPY INTO LEAD TYPE. THE LETTER TYPE AND THE ILLUSTRATIONS, WHICH LARGELY COME FROM OUTSIDE SOURCES, ARE THEN ARRANGED AND LOCKED INTO A FRAME, EACH FRAME REPRESENTING A PAGE OF THE NEWSPAPER. AT THIS POINT IN THE PROCESS, THE EMPLOYEES OF THE EMPLOYER REPRESENTED BY THE RESPONDENT TRADE UNION (HEREINAFTER REFERRED TO AS THE STEREOTYPERS UNION) MAKE A MATRIX BY PLACING A SEMI-WET PIECE OF CARDBOARD ON EACH FRAME AND APPLYING PRESSURE SO THAT THE WORDS AND ILLUSTRATIONS IN THE FRAME MAKE AN IMPRESSION ON THE CARDBOARD. THE MATRIX IS THEN DRIED INTO A SEMI-CYLINDRICAL SHAPE, AFTER WHICH IT IS PLACED IN A FORM INTO WHICH MOLTEN METAL IS POURED AND ALLOWED TO DRY. THE END RESULT IS A SEMI-CYLINDRICAL METAL PLATE BEARING THE IMPRESSION OF THE WORDS AND ILLUSTRATIONS AS COMPOSED IN THE FRAME. EMPLOYEES REPRESENTED BY THE PRINTING PRESSMEN'S UNION THEN PLACE THE PLATE DIRECTLY IN THE PRESS AND PRINT THE PAGE OF THE NEWSPAPER.

5. UNDER THE NEW COLD METAL PHOTOCOMPOSITION PROCESS, THE EQUIPMENT FOR WHICH IS PRESENTLY BEING INSTALLED IN THE EMPLOYER'S NEW PRINT-

ING PLANT AND IS EXPECTED TO BE IN PRODUCTION OPERATION SOMETIME IN AUGUST OF THIS YEAR, THE FRAMES CONTAINING THE LETTER TYPE AND ILLUSTRATIONS FOR EACH PAGE OF THE NEWSPAPER WILL BE REPLACED BY A PAPER PASTEUR. THE LETTERING FOR THE PASTEUR IS PRODUCED BY USING A TELETYPESSETTER KEYBOARD AND CERTAIN COMPUTER CODES, PRODUCING A TAPE WHICH IS PROCESSED THROUGH A COMPUTER. THE OUTPUT FROM THE COMPUTER, THAT IS, THE EDITORIAL CONTENT, AND ANY ILLUSTRATIONS, ARE THEN ARRANGED AND PASTED ON A SINGLE PIECE OF PAPER FOR EACH PAGE OF THE NEWSPAPER. THE EMPLOYER HAS ASSIGNED THE WORK OF OPERATING THE COMPUTER AND DOING THE PAPER PASTEURS TO COMPOSING ROOM EMPLOYEES REPRESENTED BY THE TYPOGRAPHICAL UNION.

6. IN ITS NEW PRINTING PLANT, THE EMPLOYER HAS ESTABLISHED A CAMERA AND PLATEMAKING DEPARTMENT, ALL OF THE EMPLOYEES OF WHICH WILL WORK IN AN ENCLOSED ATMOSPHERICALLY CONTROLLED ROOM CONTAINING CAMERAS AND NEW PLATEMAKING EQUIPMENT. ONCE EACH PAGE OF THE NEWSPAPER IS PASTED UP IN ITS FINAL FORM, IT IS PASSED ON TO THE CAMERA AND PLATEMAKING DEPARTMENT WHERE IT IS PHOTOGRAPHED BY A CAMERA WHICH PRODUCES A NEGATIVE THAT BEARS THE IMAGE OF THE PASTED UP PAGE. THE NEGATIVE IS THEN PLACED IN CONTACT WITH A PRESENSITIZED COATED SHEET OF ALUMINIUM WHICH IS EXPOSED TO A HIGH INTENSITY LIGHT, THE RESULT OF WHICH IS THAT THE IMAGE ON THE NEGATIVE IS TRANSFERRED TO THE ALUMINIUM SHEET. USING A PERFORATING MACHINE, THE ALUMINIUM SHEET IS THEN BENT INTO A SEMI-CYLINDRICAL SHAPE WHICH IS DIRECTLY PLACED IN THE PRESS TO PRINT THE PAGE OF THE NEWSPAPER.

7. THE EMPLOYER HAS ASSIGNED ALL OF THE WORK PERFORMED IN THE CAMERA AND PLATEMAKING DEPARTMENT, THAT IS, THE OPERATION OF THE CAMERAS AND PLATEMAKING EQUIPMENT, TO ITS EMPLOYEES WHO ARE REPRESENTED BY THE STEREOTYPERS UNION.

8. THE EMPLOYER SUBMITS THAT IT IS NOT FEASIBLE, FOR REASONS OF EFFICIENCY AND QUALITY CONTROL, TO SEPARATE THE PHOTOGRAPHIC AND PLATEMAKING FUNCTIONS CARRIED ON IN THE CAMERA AND PLATEMAKING DEPARTMENT. THE TYPOGRAPHICAL UNION SUBMITS THAT THE OPERATIONS OF THE CAMERAS FALLS WITHIN ITS WORK JURISDICTION AND ACCORDINGLY THAT WORK SHOULD HAVE BEEN ASSIGNED TO ITS MEMBERS. THE TYPOGRAPHICAL UNION FURTHER SUBMITS THAT SHOULD THE BOARD FIND THAT THE PHOTOGRAPHIC AND PLATEMAKING FUNCTIONS ARE NOT SEPARATE, THEN ALL OF THE WORK PERFORMED IN THE CAMERA AND PLATEMAKING DEPARTMENT SHOULD HAVE BEEN ASSIGNED TO ITS MEMBERS. THE STEREOTYPERS UNION, FOR ITS PART, SUBMITS THAT ALL OF THE WORK OF THE DEPARTMENT, THAT IS, THE OPERATION OF THE CAMERAS AND THE PLATEMAKING FALLS WITHIN ITS JURISDICTION AND ACCORDINGLY HAS BEEN PROPERLY ASSIGNED BY THE EMPLOYER TO ITS MEMBERS.

9. NEITHER THE TYPOGRAPHICAL UNION'S NOR THE STEREOTYPERS UNION'S CURRENT COLLECTIVE AGREEMENTS WITH THE EMPLOYER CONTAINS ANY PROVISION WHEREBY THE EMPLOYER RECOGNIZES THAT ANY PARTICULAR WORK FUNCTIONS FALL WITHIN THE PURVIEW OF EITHER UNION, ALTHOUGH DURING NEGOTIATIONS, THE TYPOGRAPHICAL UNION UNSUCCESSFULLY ENDEAVOURED TO HAVE THE EMPLOYER INCORPORATE A WORK JURISDICTION PROVISION IN ITS COLLECTIVE AGREEMENT.

ACCORDINGLY, THE COLLECTIVE AGREEMENTS WHICH THE EMPLOYER HAS WITH THE TWO UNIONS AFFORD NO SUPPORT TO THE JURISDICTIONAL CLAIMS ASSERTED BY EITHER THE TYPOGRAPHICAL UNION OR THE STEREOTYPERS UNION. FURTHER, NOTWITHSTANDING THE EVIDENCE ADDUCED BY THE EMPLOYER, IT WAS NOT DEMONSTRATED TO OUR SATISFACTION THAT ECONOMY OR EFFICIENCY WOULD BE BETTER SERVED BY THE WORK BEING ASSIGNED TO EMPLOYEES REPRESENTED BY THE STEREOTYPERS UNION AS OPPOSED TO THE TYPOGRAPHICAL UNION. MOREOVER, THE OPERATION OF THE CAMERAS INVOLVES THE ACQUISITION OF SKILLS, WHICH PRIOR TO THE INSTALLATION OF THE PHOTOGRAPHIC EQUIPMENT IN THE NEW PLANT, WERE POSSESSED BY NEITHER THE TYPOGRAPHERS NOR STEREOTYPERS IN THE EMPLOY OF THE EMPLOYER. IT WOULD APPEAR, HOWEVER, THAT BOTH GROUP OF EMPLOYEES ARE EQUALLY CAPABLE OF BEING TRAINED TO PERFORM THE WORK INVOLVED IN THE OPERATION OF THE CAMERAS.

10. THE UTILIZATION OF THE COLD METAL PHOTOCOMPOSITION PROCESS OF OFFSET PRINTING HAS OCCURRED ONLY IN VERY RECENT YEARS. THE EVIDENCE ADDUCED BY THE TYPOGRAPHICAL UNION, IF ACCEPTED AT FACE VALUE, INDICATES THAT WHERE THE PROCESS HAS BEEN INTRODUCED BY NEWSPAPERS IN ONTARIO AND FOR THAT MATTER ELSEWHERE IN CANADA AND ALSO THE UNITED STATES, THE CAMERA WORK HAS BEEN ASSIGNED TO MEMBERS OF THE TYPOGRAPHICAL UNION. THE STEREOTYPERS UNION, HOWEVER, ADDUCED EVIDENCE TO SHOW THAT IN, AT LEAST, A FEW INSTANCES IN ONTARIO, THE CAMERA WORK INVOLVED IN THE COLD METAL PROCESS HAS BEEN ASSIGNED TO STEREOTYPERS. MOREOVER, THE EVIDENCE OF THE LATTER UNION CAST SOME DOUBT ON THE EVIDENCE OF THE TYPOGRAPHICAL UNION AS TO THE ASSIGNMENT OF THE CAMERA WORK WHICH HAS BEEN MADE IN A COUPLE OF SPECIFIED NEWSPAPERS IN ONTARIO. IT SHOULD BE NOTED, HOWEVER, THAT ONLY IN LARGER CIRCULATION NEWSPAPER, INCLUDING THE OTTAWA CITIZEN, ARE STEREOTYPERS REPRESENTED BY THE STEREOTYPERS UNION. IN MOST SMALLER CIRCULATION NEWSPAPERS THROUGHOUT ONTARIO, STEREOTYPERS ARE GENERALLY REPRESENTED BY THE PRINTING PRESSMEN'S UNION AND IN A FEW INSTANCES BY THE INTERNATIONAL TYPOGRAPHICAL UNION. AS WELL, SOME OF THE SMALLER NEWSPAPERS HAVE NON-UNION SHOPS. GENERALLY SPEAKING, HOWEVER, THE FACTORS OF INDUSTRY AND AREA PRACTICE FAVOURS THE JURISDICTIONAL CLAIM OF THE TYPOGRAPHICAL UNION.

11. ALTHOUGH THE OPERATIONS OF CAMERAS AND THE MAKING OF PLATES HAVE BEEN INCORPORATED INTO A SINGLE DEPARTMENT AND HOUSED IN A SEPARATE ROOM IN THE NEW PLANT, WE ARE NOT ENTIRELY PERSUADED THAT THE TWO FUNCTIONS COULD NOT BE SEVERED. HOWEVER, IN THE HOT METAL PROCESS, ONLY AFTER THE LETTER TYPE AND ILLUSTRATIONS ARE LOCKED UP IN A FRAME IS ANY IMPRESSION OF A PAGE OF NEWSPAPER MADE. IN THE COLD METAL PROCESS, WHILE CAMERA WORK IS SOMETIMES INVOLVED IN THE REPRODUCTION OF ILLUSTRATIONS, ONLY AFTER THE FINAL PASTEUR IS AN IMAGE MADE OF A PAGE OF NEWSPAPER. IN THE CASE OF THE HOT METAL PROCESS, AN IMPRESSION OF THE LETTER TYPE AND ILLUSTRATIONS IN THE FRAME, BY MECHANICAL MEANS, IS TRANSFERRED TO A MATRIX AND THE IMPRESSION ON THE MATRIX, IN TURN, IS TRANSFERRED TO A PLATE. IN THE CASE OF THE COLD METAL PROCESS, THE IMAGE OF THE COMPLETED PASTED UP PAGE, BY PHOTOGRAPHIC MEANS, IS TRANSFERRED TO A NEGATIVE AND THE IMAGE ON THE NEGATIVE, IN TURN, IS TRANSFERRED TO A PLATE. WHILE A COMPLETE PARALLEL CANNOT BE DRAWN BETWEEN THE TWO PROCESSES,

THE FACT THAT THE MAKING OF IMPRESSIONS IN THE HOT METAL PROCESS FALLS WITHIN THE RECOGNIZED WORK JURISDICTION OF STEREOTYPERS LENDS SOME MEASURE OF SUPPORT TO THE CLAIM OF THE STEREOTYPERS UNION TO THE MAKING OF IMAGES BY CAMERA IN THE COLD METAL PROCESS.

12. THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TYPOGRAPHICAL UNION CONTAINS A JOB SECURITY CLAUSE WHICH WAS NEGOTIATED BY THE PARTIES. THE CLAUSE PROVIDES THAT NO PERSON EMPLOYED AS OF DECEMBER 31, 1971 SHALL SUFFER LOSS OF EMPLOYMENT SOLELY AS A RESULT OF THE INTRODUCTION OF NEW EQUIPMENT AND PROCESSES. IN PRACTICAL TERMS, THIS MEANS THAT THE JOBS OF 57 EMPLOYEES REPRESENTED BY THE TYPOGRAPHICAL UNION ARE GUARANTEED. SINCE DECEMBER 31, 1971, SEVEN ADDITIONAL EMPLOYEES REPRESENTED BY THE TYPOGRAPHICAL UNION HAD BEEN HIRED. ACCORDING TO THE EVIDENCE, HOWEVER, THEY WERE HIRED ON THE EXPLICIT UNDERSTANDING THAT THEIR EMPLOYMENT WOULD BE TERMINATED UPON THE EMPLOYER'S COMMENCEMENT OF ITS PRODUCTION OPERATION IN ITS NEW PLANT USING THE COLD METAL PHOTO-COMPOSITION PROCESS. THE COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE STEREOTYPERS UNION, ON THE OTHER HAND, CONTAINS NO JOB SECURITY CLAUSE. AT THE PRESENT, THERE ARE EIGHT EMPLOYEES REPRESENTED BY THE STEREOTYPERS UNION ALL OF WHOM ARE BEING TRAINED BY THE EMPLOYER TO OPERATE THE NEW CAMERA AND PLATEMAKING EQUIPMENT. SHOULD THE WORK ASSIGNMENT MADE BY THE EMPLOYER BE MAINTAINED, THERE WOULD BE NO LOSS OF EMPLOYMENT FOR EITHER THE STEREOTYPERS OR THE TYPOGRAPHERS, WITH THE EXCEPTION OF THE SEVEN EMPLOYEES REFERRED TO ABOVE WHO WERE HIRED ON A TEMPORARY BASIS. ON THE OTHER HAND, IF ALL OF THE WORK PERFORMED IN THE CAMERA AND PLATEMAKING DEPARTMENT WERE ASSIGNED TO EMPLOYEES REPRESENTED BY THE TYPOGRAPHICAL UNION, THE SERVICES OF NONE OF THE STEREOTYPERS WOULD BE REQUIRED. FURTHER, EVEN IF ONLY THE CAMERA WORK WERE ASSIGNED TO THE TYPOGRAPHERS, IT APPEARS THAT THERE WOULD STILL BE A LOSS OF EMPLOYMENT FOR PROBABLY HALF OF THE STEREOTYPERS. IN OTHER WORDS, THE ASSIGNMENT OF EITHER ALL OR PART OF THE WORK OF THE CAMERA AND PLATEMAKING DEPARTMENT TO THE TYPOGRAPHERS WOULD RESULT IN A LOSS OF EMPLOYMENT FOR THE STEREOTYPERS, WHEREAS THE OPPOSITE ASSIGNMENT WOULD RESULT IN NO LOSS OF EMPLOYMENT EXCEPT FOR A NUMBER OF RECENTLY HIRED TEMPORARY EMPLOYEES. WE WOULD ADD HERE THAT THE PREFERENCE OF THE EMPLOYER TO ASSIGN THE WORK IN DISPUTE TO THE STEREOTYPERS, ALTHOUGH OTHER REASONS WERE ALSO ADVANCED, WAS REASONABLE ON THIS GROUNDS ALONE. ACCORDINGLY, THE FACTOR OF LOSS OF JOBS FAVOURS THE ASSIGNMENT OF WORK TO EMPLOYEES REPRESENTED BY THE STEREOTYPERS UNION.

13. HAVING REGARD TO ALL OF THE FOREGOING CONSIDERATIONS WE FIND NO COMPELLING REASONS TO DISTURB THE WORK ASSIGNMENT MADE BY THE EMPLOYER. WE WOULD EMPHASIZE, HOWEVER, THAT OUR DETERMINATION IS LIMITED TO THIS DISPUTE AND IS BASED ON THE INDIVIDUAL CIRCUMSTANCES OF THIS INSTANT CASE.

14. ACCORDINGLY, THE BOARD DIRECTS THAT THE EMPLOYER ASSIGN THE CAMERA AND PLATEMAKING WORK PERFORMED IN THE CAMERA AND PLATEMAKING DEPARTMENT OF ITS NEW PRINTING PLANT AT OTTAWA TO EMPLOYEES REPRESENTED BY THE STEREOTYPERS UNION.

3822-73-U: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (COMPLAINANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: K. GILBERT AND P. REIF FOR THE COMPLAINANT; J. H. GRINGORTEN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER O. HODGES: JULY 31, 1973.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, PETER REIF HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE SAID ACT.

2. THE EVIDENCE DISCLOSES THAT PETER REIF WAS ENGAGED BY THE RESPONDENT ON JULY 5, 1972, AS A TRAINEE ENGINEER, A POSITION WHICH IN TURN, WAS DESIGNED TO QUALIFY HIM AS A NON-TICKETED SHIFT ENGINEER IN ONE OF THE RESPONDENT'S PLANTS. THE EVIDENCE FURTHER DISCLOSES THAT ALTHOUGH REIF WAS NEVER DISCIPLINED FOR POOR WORK PERFORMANCE, HE NEVERTHELESS WAS NOT PROMOTED TO SHIFT ENGINEER AT THE END OF THE QUALIFYING PERIOD. HOWEVER, HE DID CONTINUE TO PERFORM SOME OF THE DUTIES OF TRAINEE ENGINEER EVEN UP TO THE APPROXIMATE TIME OF HIS TERMINATION EFFECTIVE MAY 18, 1973. DURING HIS TEN AND ONE HALF MONTH PERIOD OF EMPLOYMENT, REIF, AS A DIRECT RESULT OF VARIOUS PERSONAL VISITS TO THE OFFICE OF MR. GRINGORTEN, THE PROPERTY ADMINISTRATOR OF THE RESPONDENT, RECEIVED THREE SUCCESSIVE 25¢ INCREASES IN HIS HOURLY PAY DURING THE MONTHS OF AUGUST AND SEPTEMBER OF 1972 AND IN JANUARY OF 1973.

3. REIF'S EVIDENCE IS TO THE EFFECT THAT HE SIGNED A MEMBERSHIP CARD IN THE COMPLAINANT ON MAY 4, 1973 AND THAT HE WAS INSTRUMENTAL IN ADVOCATING OTHERS TO JOIN. HE STATED THAT ON OR ABOUT THE EVENING OF MAY 10, 1973, HE WAS ASKED BY HIS IMMEDIATE SUPERVISOR, BILL MARNOCH, THE BUILDING SUPERINTENDENT WHETHER HE HAD JOINED THE UNION. WHEN REIF ANSWERED IN THE AFFIRMATIVE, HE STATED THAT MARNOCH THEN "WALKED AWAY IN A BAD TEMPER" WHILE REPLYING TO HIM THAT "YOU ARE NOT GOING TO PUT A KNIFE IN MY BACK." REIF FURTHER TESTIFIED THAT UPON REPORTING AT THE FORESTER BUILDING FOR WORK THE NEXT DAY, MARNOCH HAD LEFT A MESSAGE FOR HIM TO ATTEND AT THE AMERICAN TOWER BUILDING. ALTHOUGH NO WORK INSTRUCTIONS ACCOMPANIED THE MESSAGE, REIF WENT TO THIS BUILDING, WHERE, ACCORDING TO THE WITNESS, PETER KONTOS, THE SUPERINTENDENT OF THE BUILDING EXPRESSED SURPRISE AT SEEING HIM THERE. REIF TESTIFIED HE THEN WENT DOWNSTAIRS TO ASSIST IN MOVING SOME OFFICE EQUIPMENT. APPROXIMATELY TWO AND ONE HALF HOURS LATER, HE WAS MET BY MARNOCH WHO ACCORDING TO THE WITNESS, WAS AGAIN "IN BAD TEMPER". REIF TESTIFIED THAT MARNOCH THEN THREW A SEALED ENVELOPE UPON A TABLE DIRECTLY IN FRONT OF HIM AS MARNOCH INFORMED HIM THAT "I DON'T THINK YOU WILL BE PLEASED WITH THIS YOU WEE BASTARD." REIF THEN OPENED THE ENVELOPE WHICH CONTAINED THE FOLLOWING NOTICE:

SEND TO →	FROM BILL MARNOCH, SUPT OLYMPIA & YORK DEV. LTD. FORESTERS HOUSE	DEPARTMENT DATE 11/5/73 SUBJECT
	MESSAGE "7(SEVEN) DAYS FROM TODAY FRI 11TH MAY 1973 YOUR EMPLOYMENT WITH THE COMPANY WILL TERMINATE 18/5/73 YOUR REFUSAL TO ACCEPT NIGHT & SHIFT WORK ALLOWS ME NO ALTERNATIVE THAN TO TERMINATE YOUR EMPLOYMENT" BILL MARNOCH (SGD) <u>SUPT</u>	

4. THE EVIDENCE FURTHER DISCLOSES THAT REIF, IN ACCORDANCE WITH COMPANY POLICY CONCERNING MEMBERS OF THE JEWISH FAITH WAS NOT REQUIRED TO WORK THE SABBATH AND THAT HIS SHIFTS WERE ACCORDINGLY ARRANGED TO CONFORM WITH THIS RULING. IN THIS REGARD, REIF TESTIFIED THAT HE HAD WORKED PREVIOUS NIGHT SHIFTS. HOWEVER, IN NOVEMBER OF 1972, HE WAS INJURED AS A RESULT OF A FALL WHILE AT WORK DURING THE NIGHT SHIFT AND AS A RESULT OF THE ACCIDENT, HE SUBSEQUENTLY DID NOT ACCEPT HIS SUPERVISOR'S OFFER FOR FURTHER NIGHT SHIFT WORK IN FEBRUARY OF 1973.

5. THE EVIDENCE OF BILL MARNOCH, IN DEFENCE, IS THAT DURING THE COURSE OF REIF'S FIRST MONTH OF EMPLOYMENT, HE CAME TO THE CONCLUSION THAT THE AGGRIEVED PERSON, DID NOT MEASURE UP TO EXPECTATIONS AND ACCORDINGLY RECOMMENDED TO HIS SUPERIOR, MR. GRINGARTEN THAT REIF BE PLACED IN ANOTHER JOB. IN THIS REGARD, HE STATED THAT REIF COULD NOT GRASP THE

INTRICACIES OF AIR-CONDITIONING SYSTEMS, NOR IN ANY EVENT WAS HE AVAILABLE FOR NORMAL ROTATIONAL ASSIGNMENTS IN THE PLANTS BECAUSE OF HIS RELIGIOUS SCRUPLES CONCERNING THE FRIDAY EVENING AND SATURDAY SHIFTS. HE ACCORDINGLY CLASSIFIED REIF AT THIS POINT AS MERELY A "MAINTENANCE MAN" TO WHICH VARIOUS ALTERNATIVE JOBS WERE ASSIGNED. HE STATED THAT MUCH OF REIF'S TIME HOWEVER WAS SPENT IN THE NORTH AMERICAN TOWER BUILDING WHERE HE ASSISTED THE "DAY ENGINEER" IN TAKING CERTAIN READINGS ON GAUGES AND CONDUCTING CHEMICAL WATER TESTS. AS REGARDS THE ODD JOBS THAT WERE ASSIGNED TO HIM, MARNOCH STATED THAT REIF WILLINGLY ACCEPTED THESE ASSIGNMENTS AND PERFORMED REASONABLY WELL. HE DID INDICATE HOWEVER THAT REIF HAD REFUSED TO CLEAN WINDOW UNITS OR PERFORM LIGHT MAINTENANCE, A NIGHT SHIFT FUNCTION. HE STATED THAT REIF HAD ALSO DECLINED THE POSITION OF PARKING ATTENDANT WHICH WAS OFFERED TO HIM AT VARIOUS TIMES.

6. MARNOCH FURTHER TESTIFIED THAT HE HAD REQUESTED THAT REIF WORK THE NIGHT SHIFT SOMETIME BETWEEN MARCH AND APRIL OF 1973, IN ADDITION TO THE REQUEST HE HAD EARLIER MADE DURING THE PREVIOUS MONTH OF FEBRUARY. IN THIS RESPECT, MARNOCH STATED THAT HE NEVER FORCED REIF TO ACCEPT THESE NIGHT SHIFT ASSIGNMENTS NOR DID HE THREATEN DISMISSAL IN EVENT OF REFUSAL. NEVERTHELESS HE STATED THAT REIF MUST HAVE KNOWN THE CONSEQUENCES OF SUCH REFUSAL SINCE "HE CAME FROM THE SAME SPOT I DID." HE FURTHER STATED THAT IF ANY OF THE OTHER EMPLOYEES HAD SO REFUSED, "I WOULD HAVE FIRED THEM BUT I DIDN'T FIRE REIF BECAUSE HE WAS SIXTY-TWO YEARS OLD AND I TOOK PITY ON HIM."

7. IN ANY EVENT, MARNOCH FURTHER TESTIFIED THAT HE HAD MADE A NUMBER OF REQUESTS TO MR. GRINGORTEN FOR PERMISSION TO TERMINATE REIF. THE LAST OF THESE REQUESTS IS IN TYPEWRITTEN FORM AND IS REPRODUCED HEREIN AS FOLLOWS:

SEND TO	FROM BILL MARNOCH	DEPARTMENT FORESTER BLDG.
	J. H. GRINGORTEN	DATE APRIL 17, 1973. SUBJECT PETER REIF

MESSAGE

I KNOW THIS IS A TOUCHY SUBJECT WITH YOU, BECAUSE PETER IS ONE OF YOUR PET BOYS. HOWEVER, I MUST REPEAT THAT, AS A TRAINEE ENGINEER, HE IS VIRTUALLY HOPELESS. I CAN'T DO MUCH WITH HIM. HE IS ALWAYS BEEFING ABOUT MORE MONEY AND, IN MY VIEW, HE IS ALREADY OVERPAID FOR THE SERVICES WE ARE GETTING OUT OF HIM. AGAIN, I ASK YOU TO ALLOW ME TO GIVE HIM HIS NOTICE.

HE HAS REPEATEDLY REFUSED SHIFT WORK AND, 2 OR 3 WEEKS AGO, I STRONGLY URGED HIM TO LOOK FOR ANOTHER JOB. SINCE HE IS MAKING NO EFFORT TO DO SO, I REALLY HAVE NO CHOICE BUT TO ASK YOU TO LET ME TERMINATE HIS EMPLOYMENT.

BILL MARNOCH (SGD)

BELOW MARNOCH'S SIGNATURE APPEARS MR. GRINGORTEN'S HANDWRITTEN REPLY TO THE REQUEST, WHICH IS REPRODUCED HEREIN AS FOLLOWS:

APR 22 1973

BILL: HE'S NOT MY "PET". I'VE JUST BEEN ANXIOUS TO BE FAIR TO THE GUY, IN SPITE OF HIS LIMITED USEFULNESS.

HOWEVER, YOU'VE BEEN MAKING A PRETTY STRONG CASE FOR LETTING HIM GO FOR SOME TIME NOW. YOU HAVE MY AUTHORIZATION TO TERMINATE HIM AT YOUR CONVENIENCE.

J. H. GRINGORTEN (SGD)

UPON CROSS-EXAMINATION, MARNOCH CONCEDED THAT HE DID NOT IMMEDIATELY TERMINATE REIF UPON RECEIVING THE AUTHORIZATION BUT ON THE CONTRARY, HE CONTINUED TO ACTIVELY SEEK TO PLACE HIM IN COMPATIBLE JOBS. HIS ACTIONS IN THIS REGARD, HE STATED WERE AGAIN PROMPTED "BECAUSE OF COMPASSION" FOR REIF.

8. MARNOCH FURTHER DENIED THAT REIF'S ASSOCIATION WITH THE COMPLAINANT HAD ANYTHING TO DO WITH HIS SUBSEQUENT DECISION ON MAY 11, 1973 TO DISCHARGE HIM. HE HOWEVER CONCEDED THAT HE DID ASK REIF IF HE

HAD JOINED THE UNION APPROXIMATELY TWO WEEKS PRIOR TO THIS TIME, BUT THAT HIS ONLY COMMENT TO REIF'S AFFIRMATION IN THIS REGARD WAS "THAT'S FINE". THIS IS TO BE CONTRASTED WITH REIF'S EVIDENCE IN THIS RESPECT AS SET OUT IN PARAGRAPH #3 HEREIN.

9. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE WE FIND THAT FOLLOWING THE THREE MONTH TRIAL PERIOD AS A TRAINEE ENGINEER, HE WAS RETAINED BY THE RESPONDENT IN A GENERAL MAINTENANCE CAPACITY WHICH INCLUDED THE PERFORMANCE OF CERTAIN DUTIES ENCOMPASSED IN REIF'S ORIGINAL POSITION WITH THE RESPONDENT. FURTHER, WE HAVE NO HESITATION IN FINDING THAT DURING CERTAIN PERIODS OF REIF'S EMPLOYMENT, THE RESPONDENT, THROUGH THE ACTIONS OF BOTH MESSRS. MARNOCH AND GRINGORTEN, ACTED HUMANELY AND WITH COMPASSION TOWARDS REIF AND THAT, ASIDE FROM OTHER CONSIDERATIONS, DISCHARGE ON THE BASIS OF INCOMPETENCE AND REFUSAL TO ACCEPT WORK ASSIGNMENTS MAY VERY WELL HAVE BEEN JUSTIFIED. BE THAT AS IT MAY, THE RESPONDENT CHOSE NOT TO TERMINATE REIF AT SUCH TIME AND THE CRUCIAL QUESTION NOW BEFORE THIS BOARD IS TO DETERMINE WHAT EFFECT, IF ANY, REIF'S DISCLOSURE OF UNION ACTIVITY HAD IN MARNOCH'S SUBSEQUENT DECISION TO DISCHARGE HIM.

10. AS IS QUITE COMMON IN PROCEEDINGS BEFORE THE BOARD, WE ARE AGAIN ASKED TO MAKE A DETERMINATION IN THE FACE OF CONFLICTING EVIDENCE AS ADDUCED BY THE PARTIES. NORMALLY IT IS UPON THE CREDIBILITY OF THE WITNESSES AS OBSERVED BY THEIR Demeanour IN THE WITNESS BOX, THE MANNER IN WHICH THEY TESTIFIED AND THE REASONABLENESS OF SUCH TESTIMONY, TO WHICH THIS BOARD, IN THE FINAL ANALYSIS, MUST LOOK TO, IN PREFERRING THE EVIDENCE OF ONE WITNESS OVER THE OTHER. ON THE ONE HAND, WE HAVE THE EVIDENCE OF MR. MARNOCH WHO IS HELD UP BY THE RESPONDENT AS A "MENTOR" OF THE EMPLOYEES IN HIS CHARGE - A SUPERVISOR WHO DID EVERYTHING IN HIS POWER TO FIT REIF INTO THE RESPONDENT'S OPERATION. ON THE OTHER HAND, WE HAVE THE HIGHLY EMOTIONAL AND CHARGED TESTIMONY OF THE AGGRIEVED PERSON HIMSELF ALLEGING IN RIGHTEOUS INDIGNATION THAT MARNOCH HAS DISCRIMINATED AGAINST HIM BECAUSE OF UNION ACTIVITY.

11. IN THIS REGARD, WE CANNOT DENY THAT THERE ARE VARIOUS DEFICIENCIES AND INCONSISTENCIES IN REIF'S TESTIMONY BEFORE US. HOWEVER, AS HAS BEEN STATED BY THIS BOARD IN THE RECENT ECHLIN LIMITED CASE (BOARD FILE NO. 3867-73-R)

"8. IN ASSESSING EVIDENCE NOT ONLY MUST THE EVIDENCE OF THE INDIVIDUAL WITNESSES BE ASSESSED, BUT IT SHOULD BE ASSESSED AGAINST THE TOTAL BACKGROUND SITUATION. ONE CANNOT SIMPLY DECIDE THE ISSUE OF CREDIBILITY OR MATTER IN DISPUTE BY THE MERE FACT THAT SOME TESTIMONY MAY BE INCONSISTENT OR OTHER TESTIMONY TOO PAT. VERY OFTEN IN CASES THERE IS A "SENSE" TO THE TESTIMONY AND THE EVIDENCE OF INDIVIDUAL WITNESSES MUST BE TESTED AGAINST THE SENSE OR THE FLOW OF THE TESTIMONY, WHILE TAKING INTO CONSIDERATION THE FACTOR OF HUMAN ERROR. THAT

VIEW OF WEIGHING EVIDENCE IS MORE APTLY SET FORTH IN THE JUDGMENT OF O'HALLORAN, J. A., IN FARYNA V CHORNY, [1952] 2 D.L.R. 354 AS FOLLOWS:

"IF A TRIAL JUDGE'S FINDING OF CREDIBILITY IS TO DEPEND SOLELY ON WHICH PERSON HE THINKS MADE THE BETTER APPEARANCE OF SINCERITY IN THE WITNESS BOX, WE ARE LEFT WITH A PURELY ARBITRARY FINDING AND JUSTICE WOULD THEN DEPEND UPON THE BEST ACTORS IN THE WITNESS BOX. ON REFLECTION IT BECOMES ALMOST AXIOMATIC THAT THE APPEARANCE OF TELLING THE TRUTH IS BUT ONE OF THE ELEMENTS THAT ENTER INTO THE CREDIBILITY OF THE EVIDENCE OF A WITNESS. OPPORTUNITIES FOR KNOWLEDGE, POWERS OF OBSERVATION, JUDGMENT AND MEMORY, ABILITY TO DESCRIBE CLEARLY WHAT HE HAS SEEN AND HEARD, AS WELL AS OTHER FACTORS, COMBINE TO PRODUCE WHAT IS CALLED CREDIBILITY, AND CF. RAYMOND V. BOSANQUET (1919), 50 D.L.R. 560 AT P. 566, 59 S.C.R. 452 AT P. 460, 17 O.W.N. 295. A WITNESS BY HIS MANNER MAY CREATE A VERY UNFAVOURABLE IMPRESSION OF HIS TRUTHFULNESS UPON THE TRIAL JUDGE, AND YET THE SURROUNDING CIRCUMSTANCES IN THE CASE MAY POINT DECISIVELY TO THE CONCLUSION THAT HE IS ACTUALLY TELLING THE TRUTH. I AM NOT REFERRING TO THE COMPARATIVELY INFREQUENT CASES IN WHICH A WITNESS IS CAUGHT IN A CLUMSY LIE.

THE CREDIBILITY OF INTERESTED WITNESSES, PARTICULARLY IN CASES OF CONFLICT OF EVIDENCE, CANNOT BE GAUGED SOLELY BY THE TEST OF WHETHER THE PERSONAL Demeanour OF THE PARTICULAR WITNESS CARRIED CONVICTION OF THE TRUTH. THE TEST MUST REASONABLY SUBJECT HIS STORY TO AN EXAMINATION OF ITS CONSISTENCY WITH THE PROBABILITIES THAT SURROUND THE CURRENTLY EXISTING CONDITIONS. IN SHORT, THE REAL TEST OF THE TRUTH OF THE STORY OF A WITNESS IN SUCH A CASE MUST BE ITS HARMONY WITH THE PREPONDERANCE OF THE PROBABILITIES WHICH A PRACTICAL AND INFORMED PERSON WOULD READILY RECOGNIZE

AS REASONABLE IN THAT PLACE AND IN THOSE CONDITIONS. ONLY THUS CAN A COURT SATISFACTORILY APPRAISE THE TESTIMONY OF QUICK-MINDED, EXPERIENCED AND CONFIDENT WITNESSES, AND OF THOSE SHREWD PERSONS ADEPT IN THE HALF-LIE AND OF LONG AND SUCCESSFUL EXPERIENCE IN COMBINING SKILFUL EXAGGERATION WITH PARTIAL SUPPRESSION OF THE TRUTH. AGAIN A WITNESS MAY TESTIFY WHAT HE SINCERELY BELIEVES TO BE TRUE, BUT HE MAY BE QUITE HONESTLY MISTAKEN. FOR A TRIAL JUDGE TO SAY "I BELIEVE HIM BECAUSE I JUDGE HIM TO BE TELLING THE TRUTH", IS TO COME TO A CONCLUSION ON CONSIDERATION OF ONLY HALF THE PROBLEM. IN TRUTH IT MAY EASILY BE SELF-DIRECTION OF A DANGEROUS KIND."

12. FURTHER, IN SECTION 79 PROCEEDINGS, THE BOARD HAS INTER ALIA, HELD THAT THE TIMING AND CIRCUMSTANCES SURROUNDING A DISCHARGE CONCURRENT WITH AN ORGANIZATIONAL CAMPAIGN, IS MATERIAL. (SEE THE PRINCIPLES AS SET OUT IN THE NATIONAL AUTOMATIC VENDING CASE, CLLC VOL. 2, 1960-64 ARTICLE 16, 278 P. 1161.) IN THIS REGARD, WE NOTE THAT THE COMPLAINANT HAD FILED WITH THE BOARD AN APPLICATION FOR CERTIFICATION ON MAY 8, 1973 (BOARD FILE NO. 3749-73-R) JUST THREE DAYS PRIOR TO THE DATE OF REIF'S NOTIFICATION OF DISMISSAL AND AT A TIME WHEN MARNOCH KNEW AS A RESULT OF HIS PRIOR DIRECT QUESTIONING OF REIF, THAT HE WAS A MEMBER OF THE COMPLAINANT. IT IS ALSO CLEAR THAT MARNOCH HAD NOT ACTED UPON THE AUTHORIZATION GIVEN TO HIM BY MR. GRINGORTEN ON APRIL 22, 1973, UNTIL MORE THAN THREE WEEKS HAD EXPIRED, DURING WHICH TIME MARNOCH HIMSELF NEVERTHELESS CONTINUED IN HIS EFFORTS TO FIT REIF INTO THE RESPONDENT'S ORGANIZATION. MOREOVER, REIF'S ASSIGNMENT TO THE NORTH AMERICAN BUILDING ON MAY 11, 1973, THE DATE UPON WHICH IT WAS DECIDED TO DISCHARGE HIM IN THE CIRCUMSTANCES, LEADS ONE TO SPECULATE UPON THE MOTIVES OF MARNOCH IN THIS REGARD, ESPECIALLY IN VIEW OF THE UNCONTRADICTED EVIDENCE THAT THE PERSON TO WHOM REIF WAS TO REPORT TO, NAMELY KONTOS THE BUILDING SUPERVISOR, WAS NOT AWARE OF THE NEED OF REIF'S PRESENCE THERE AT THE TIME.

13. IN THE RESULT AND AFTER REVIEWING THE TOTALITY OF THE EVIDENCE AS ADDUCED AND APPLYING THE PRINCIPLES AS SET OUT ABOVE, WE FIND THAT THERE IS AN UNAVOIDABLE INFERENCE THAT THE DISCLOSURE OF REIF'S UNION AFFILIATION IN THESE CIRCUMSTANCES WAS A CONTRIBUTING FACTOR LEADING TO MARNOCH'S SUBSEQUENT DECISION TO ULTIMATELY TERMINATE REIF AND THAT HIS ACTIONS IN THIS REGARD THEREFORE, WERE IN VIOLATION OF THE ACT.

14. THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT FORTHWITH REINSTATE PETER REIF IN THE SAME POSITION OR A LIKE POSITION THERETO AS HE HELD AT THE DATE OF HIS TERMINATION EFFECTIVE FROM MAY 18, 1973, WITH FULL COMPENSATION FOR ALL EARNINGS LOST BY REASON OF THE DISCHARGE. IF THE PARTIES ARE UNABLE TO AGREE AS TO THE AMOUNT OF LOSS OF EARNINGS

OF REIF, BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF HIS REIN-STATEMENT WITHIN 14 DAYS HEREOF, THE BOARD, AT THE REQUEST OF EITHER PARTY, WILL GIVE THE PARTIES AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE SUBMISSIONS WITH RESPECT THERETO AND THE BOARD WILL THEN DETERMINE THE AMOUNT OF LOSS OF EARNINGS DUE.

DISSENT OF BOARD MEMBER J.D. BELL: JULY 31, 1973.

I DISSENT FOR REASONS TO BE GIVEN LATER IN WRITING.

DECISION OF BOARD MEMBER J. D. BELL: August 27, 1973.

I DISAGREE WITH THE CONCLUSION REACHED BY THE MAJORITY OF THE BOARD THAT THE DISCLOSURE OF REIF'S UNION AFFILIATION IN THESE CIRCUMSTANCES WAS A CONTRIBUTING FACTOR LEADING TO MARNOCH'S SUBSEQUENT DECISION TO ULTIMATELY TERMINATE REIF.

IN SECTION 79 PROCEEDINGS ONE OF THE MAJOR PROBLEMS CONFRONTING THE BOARD IS TO DETERMINE WHO MADE THE DECISION TO TERMINATE THE COMPLAINANT AND WHY AND WHEN WAS SUCH DECISION MADE. IN THIS CASE WE HAVE DOCUMENTARY EVIDENCE THAT MARNOCH WROTE TO GRINGORTEN ON APRIL 17, 1973, REQUESTING PERMISSION TO TERMINATE REIF AND GIVING HIS REASONS FOR SUCH REQUEST. ON APRIL 22ND, 1973, GRINGORTEN REPLIED IN WRITING AND AUTHORIZED MARNOCH TO TERMINATE REIF AT HIS (MARNOCH'S) CONVENIENCE.

THE REASONS FOR TERMINATION ARE GIVEN ON THIS DOCUMENT. IN PARAGRAPH 9 OF ITS DECISION THE MAJORITY SAYS THAT THESE COULD HAVE BEEN GROUNDS FOR TERMINATION;

"WE HAVE NO HESITATION IN FINDING THAT DURING CERTAIN PERIODS OF REIF'S EMPLOYMENT, THE RESPONDENT, THROUGH THE ACTIONS OF BOTH MESSRS. MARNOCH AND GRINGORTEN, ACTED HUMANELY AND WITH COMPASSION TOWARD REIF, AND THAT, ASIDE FROM OTHER CONSIDERATIONS, DISCHARGE ON THE BASIS OF INCOMPETENCE AND REFUSAL TO ACCEPT WORK ASSIGNMENTS MAY VERY WELL HAVE BEEN JUSTIFIED".

I PREFER THE DOCUMENTED EVIDENCE OF THE RESPONDENT WHICH TELLS WHY AND WHERE THE DECISION TO TERMINATE REIF WAS MADE TO THE HIGHLY EMOTIONAL AND CHARGED TESTIMONY OF REIF ALLEGING IN RIGHTEOUS INDIGNATION THAT MARNOCH HAD DISCRIMINATED AGAINST HIM BECAUSE OF UNION ACTIVITY.

REIF BY HIS OWN EVIDENCE DID NOT JOIN THE UNION UNTIL MAY 4TH, 1973. MARNOCH DID NOT ASK HIM IF HE HAD JOINED THE UNION UNTIL SOME TIME AFTER MAY 4TH. THIS IS ABOUT TWO WEEKS AFTER THE DECISION TO PERMIT THE TERMINATION OF REIF HAD BEEN GRANTED BY GRINGORTEN.

THEREFORE IN FACE OF THIS EVIDENCE AND IN KEEPING WITH THE PRINCIPLES CONSIDERED IN THE NATIONAL AUTOMATIC VENDING CASE, I WOULD DISMISS THE COMPLAINT.



CAST LISTINGS JULY 1973

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TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u> <u>1ST. QUARTER</u> <u>APRIL 2, TO JUNE 29,</u> <u>1973-74 1972-73</u>	
<u>CERTIFICATION AFTER VOTE*</u>		
PRE-HEARING VOTE	30	11
POST-HEARING VOTE	20	14
BALLOTS NOT COUNTED	-	-
 <u>DISMISSED AFTER VOTE</u>		
PRE-HEARING VOTE	14	11
POST-HEARING VOTE	8	15
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>
TOTAL	<u>73</u>	<u>52</u>

*INCLUDES APPLICANT-INTERVENER APPLICATION IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u> <u>1ST. QUARTER</u> <u>APRIL 2, TO JUNE 29,</u> <u>1973-74 1972-73</u>	
*RESPONDENT UNION SUCCESSFUL	2	-
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>3</u>
TOTAL	<u>3</u>	<u>3</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1973

BARGAINING AGENTS CERTIFIED DURING JULY

No Vote Conducted

2851-72-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. CHILDREN'S AID SOCIETY OF THE CITY OF BELLEVILLE, THE COUNTY OF HASTINGS AND TOWN OF TRENTON (RESPONDENT).

UNIT: "ALL SOCIAL WORKERS, CHILD CARE WORKERS AND GROUP HOME HOUSE PARENTS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT THE SUPERVISOR OF THE CHILD CARE AND HOMEFINDING DEPARTMENT, THE SUPERVISOR OF THE FAMILY SERVICES DEPARTMENT, THE DIRECTOR, PERSONS ABOVE THE RANK OF DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

3151-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT KIRKLAND LAKE, SAVE AND EXCEPT BRANCH MANAGER, PERSONS ABOVE THE RANK OF BRANCH MANAGER, SALESMEN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (NO EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3191-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. NADALIN ELECTRIC COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

UNIT #2: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

3268-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. NEEPAWA INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3550-73-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 OTTAWA, ONTARIO (APPLICANT) V. JACQUES CORMIER (RESPONDENT) V. HOMEC DRYWALL LTEE (PARTY RESPONDENT ADDED BY THE BOARD) V. INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, LOCAL UNION 1891 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT HOMEC DRYWALL LTEE IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

3553-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VALLANCE BROWN & COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (1 EMPLOYEE IN THE UNIT).

3667-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT HEAD HOSTESSES, PERSONS ABOVE THE RANK OF HEAD HOSTESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (53 EMPLOYEES IN THE UNIT).

3671-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. FOUNDATION BUILDING CONSTRUCTION DIVISION OF THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT) V. THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (RESPONDENTS ADDED BY THE BOARD) V. THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCALS #27; #666; #1133; #1963; #3227 AND #3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT A. D. ROSS & COMPANY LIMITED IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

3685-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF RAYSIDE-BALFOUR (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN RAYSIDE-BALFOUR, SAVE AND EXCEPT TREASURER AND COMMISSIONER OF WORKS AND THOSE ABOVE THE RANK OF TREASURER AND COMMISSIONER OF WORKS." (12 EMPLOYEES IN THE UNIT).

3781-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. AERO ENVIRONMENTAL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT QUALITY CONTROL INSPECTOR, LAB TECHNICIANS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3792-73-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS QUARRY, GARAGES, AND PAVCO OPERATIONS EMPLOYED AT OR WORKING OUT OF PORT COLBORNE, AND ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS ROAD BUILDING OPERATIONS IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES IN THE UNIT).

3830-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. NIAGARA DIVISION OF STEED AND EVANS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

3863-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3871-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WAYNCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3876-73-R: LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE CORPORATION OF THE TOWN OF LISTOWEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3878-73-R: LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE BOARD OF PARKS MANAGEMENT OF THE TOWN OF LISTOWEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3879-73-R: LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF LISTOWEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3893-73-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. WESTLAKE & LUX LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

3898-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. ATLAS HOIST & BODY INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

3903-73-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BOT CONSTRUCTION (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (9 EMPLOYEES IN THE UNIT).

3911-73-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARMBRO MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, LABORATORY TECHNICIANS, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (52 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT CLERKS WHO ARE EMPLOYED AT THE PIT ARE INCLUDED IN THE TERM "OFFICE STAFF" AND ARE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT.).

3932-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CRAFTSMAN FLOORS (MAN) LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

3947-73-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES' UNION LOCAL 261 (APPLICANT) V. VS SERVICES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT RIVERSIDE HOSPITAL AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS AND GRADUATE DIETITIANS, CHEF AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3949-73-R: GRAPHIC ARTS INTERNATIONAL UNION LOCAL 242 (APPLICANT) V. CARTON & DIECRAFT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3956-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

3961-73-R: GENERAL DRIVERS LOCAL 989, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3962-73-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. STEINMAN'S TRANSPORT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

3971-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CARAVELLE FOODS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, MAINTENANCE ENGINEER, QUALITY CONTROL PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAMME." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3975-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANTFORD REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3976-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3980-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 804 (APPLICANT) V. CAL BURKE ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

3981-73-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE TORONTO HOSPITAL, WESTON (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WESTON, SAVE AND EXCEPT EMPLOYEES COVERED BY EXISTING COLLECTIVE AGREEMENTS BETWEEN THE SERVICE EMPLOYEES UNION, LOCAL 204, THE LOCAL UNION 796 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, PROFESSIONAL MEDICAL STAFF, INTERN DOCTORS, GRADUATE AND UNDERGRADUATE NURSES, PHARMACISTS, DIETITIANS, TECHNICAL PERSONNEL AND STUDENTS TAKING COURSES LEADING TO SUCH POSITIONS, CRAFT WORKERS, SOCIAL SERVICE WORKERS, FOREMEN, SUPERVISORS AND PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED ON A COOPERATIVE WORK PROGRAM OR DURING VACATION PERIOD AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICAL PERSONNEL INCLUDES PHARMACY ASSISTANTS, PHYSIOTHERAPY AIDES, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SPEECH THERAPISTS, PSYCHOLOGISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS AND MEDICAL LABORATORY TECHNOLOGISTS.).

3984-73-R: LOCAL 12-L, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) V. PARR'S PRINT AND LITHO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (31 EMPLOYEES IN THE UNIT).

3988-73-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. FILM MANUFACTURING DIVISION OF E. S. & A. ROBINSON (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

3991-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

3999-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. COMBUSTION ENGINEERING - SUPERHEATER LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4000-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. DURIE TILE & TERRAZZO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

4002-73-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT & GENERAL WORKERS (APPLICANT) V. DEHAAN CARTAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

4012-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DECKER CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

4013-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. W. G. GALLAGHER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4029-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CROWN ELECTRIC COMPANY (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4034-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4043-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. DURCARD MECHANICAL CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4044-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. D'ANGELA CONSTRUCTION (ONTARIO) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY

ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4064-73-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) V. STERICLOTH PRODUCTS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BRANTFORD, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4069-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT ASSISTANT OFFICE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4070-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4071-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MARCO CONSTRUCTION INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4078-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CHINOOK CONSTRUCTION AND ENGINEERING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR

EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT WELDERS ENGAGED IN THE REPAIRING AND MAINTENANCE IN THE ABOVE BARGAINING UNIT ARE INCLUDED IN THE BARGAINING UNIT.).

4083-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. FOURMAR DRYWALL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN DRYWALL INSTALLATION IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4084-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUPERIOR PIPE LINE CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT MUNICIPALITY OF MUSKOKA AND THE TOWNSHIP OF THORAH AND ALL LAND NORTH THEREOF IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4090-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. BOSS INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4104-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HADOVIC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4105-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. KLEEN-WAY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES

ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3113-72-R: BOOT AND SHOE WORKERS' UNION; CLC, AFL-CIO (APPLICANT) v. JUNIOR FOOTWEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (163 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	119
NUMBER OF PERSONS WHO CAST BALLOTS	108
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	61
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	46

3880-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. KALADAR PLANING MILLS LTD. (MASSANAGA OPERATION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN EFFINGHAM TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSON ON REVISED VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

3944-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND THEIR HELPERS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

3269-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. RICCI-GRAHAM INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	14	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

3367-72-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL
343 (APPLICANT) V. ASSOCIATED CREDIT BUREAUS OF CANADA (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METRO-
POLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK
OF SUPERVISOR, SALESMEN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN
24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

3561-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493
(APPLICANT) V. NORTHERN MATTAGAMI DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN
A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-
WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11
EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

3632-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF CHINGUACOUSY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND TECHNICAL EMPLOYEES, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (72 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PROGRAM SUPERVISORS, PARKS SUPERINTENDENT 1, AND HEAD MAINTENANCE MEN ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	74
NUMBER OF PERSONS WHO CAST BALLOTS	68
BALLOTS SEGREGATED AND NOT COUNTED	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	32

3734-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ARMOR ELEVATOR CANADA LIMITED (RESPONDENT) V. CANADIAN UNION OF MANUFACTURING EMPLOYEES (CNTU) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO AND PICKERING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY AND/OR JANITORIAL STAFF WHOSE DUTIES CONSIST OF SECURITY AND/OR OFFICE CLEANING, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS." (255 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	239
NUMBER OF PERSONS WHO CAST BALLOTS	203
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	198
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3

3749-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 789 DON MILLS ROAD (FORESTER BUILDING) IN METROPOLITAN TORONTO SAVE AND EXCEPT ASSISTANT SUPERINTENDENT PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE AND SALES STAFF, SECURITY OFFICERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

3847-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING AND ENGINEERING, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO EACH OF THE PRESIDENT AND PERSONNEL MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONNEL OFFICER AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH UNITED STEELWORKERS OF AMERICA, LOCAL 6320 AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164..." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	28
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

3883-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MANITOULIN BOARD OF EDUCATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MANITOULIN ISLAND EMPLOYED IN ITS MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT CHIEF CUSTODIANS AND PERSONS ABOVE THE RANK OF CHIEF, CUSTODIAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

NO VOTE CONDUCTED

1081-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (INTERVENER). (2 EMPLOYEES).

2291-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (135 EMPLOYEES).

2322-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (127 EMPLOYEES).

2323-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (127 EMPLOYEES).

2324-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (127 EMPLOYEES).

2345-72-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767 (APPLICANT) v. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT). (133 EMPLOYEES).

3101-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE REGIONAL MUNICIPALITY OF WATERLOO (RESPONDENT). (50 EMPLOYEES).

3216-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT). (58 EMPLOYEES).

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3519-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. MAVIC CONSTRUCTION LIMITED (RESPONDENT). (8 EMPLOYEES).

3534-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. L & W EXPRESS LIMITED (RESPONDENT). (9 EMPLOYEES).

3665-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALWELL FORMING, A DIVISION OF MATTHEWS GROUP LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (28 EMPLOYEES).

3727-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT). (37 EMPLOYEES).

3791-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MORRIS KAMIN, Q.C. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (3 EMPLOYEES).

3812-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ROYAL OTTAWA HOSPITAL (RESPONDENT). (62 EMPLOYEES).

3885-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. NORTHEAST CONTRACTING LTD. (RESPONDENT). (2 EMPLOYEES).

3931-73-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. ANTHES BUSINESS FORMS LIMITED (RESPONDENT) V. ANTHES BUSINESS FORMS EMPLOYEES ASSOCIATION (INTERVENER). (156 EMPLOYEES).

4019-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. INDUSTRIAL SHOP BOXES LIMITED (RESPONDENT). (4 EMPLOYEES).

4022-73-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LTD. (RESPONDENT). (8 EMPLOYEES).

4023-73-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LTD. (RESPONDENT). (2 EMPLOYEES).

4033-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 (APPLICANT) V. BERNIE BERGER (RESPONDENT) V. EMPLOYEE (OBJECTOR). (3 EMPLOYEES).

4059-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. REINFORCING STEEL SETTERS (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HOPE, SOUTH MONAGHAN, ALNWICK AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4061-73-R: SERVICE EMPLOYEES UNION, LOCAL 210, WINDSOR, ONTARIO (APPLICANT) V. CLINTON PUBLIC HOSPITAL, CLINTON, ONTARIO (RESPONDENT). (77 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

3435-72-R: BOOT AND SHOE WORKER'S UNION, CLC, AFL-CIO (APPLICANT) V. JUNIOR FOOTWEAR LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT MOUNT FOREST, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (55 EMPLOYEES). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER SHALL BE SEALED.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		54
NUMBER OF PERSONS WHO CAST BALLOTS	46	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	31	

3870-73-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DOUGLAS MEMORIAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

VOTING CONSTITUENCY: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT PERSONS CURRENTLY REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND THE APPLICANT." (9 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		12
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	8	

3997-73-R: OIL & GAS TECHNICIANS, SERVICE, DOMESTIC & GENERAL WORKERS UNION, LOCAL 1267 (APPLICANT) V. TONECRAFT LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	25

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3301-72-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. FIBERGLAS CANADA LIMITED (RESPONDENT).

UNIT: "ALL TECHNICAL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, PROFESSIONAL ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED UNDER A CO-OPERATIVE UNIVERSITY TRAINING PROGRAM, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION LOCAL 9-14." (44 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL EMPLOYEES" ENCOMPASSES BOTH LABORATORY TECHNICIANS AND DRAFTSMEN.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	42
NUMBER OF PERSONS WHO CAST BALLOTS	42
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30

3664-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RIDEAU VALLEY CONSTRUCTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

3680-73-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. T. A. GOWLING CONSTRUCTION LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NASSAGAWEGA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

3681-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. RIDEAU VALLEY CONSTRUCTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

3760-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CUMMINS ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

3800-73-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF OWEN SOUND AND THE COUNTY OF GREY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND HOUSE PARENTS AND THEIR DOMESTIC STAFF." (10 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE ABOVE BARGAINING UNIT IS COMPRISED OF THE RESPONDENT'S FIELD STAFF AND INCLUDES THE PERSON CLASSIFIED BY THE RESPONDENT AS TEACHING HOMEMAKER.).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

3979-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SOUTH WINDS SAND & GRAVEL (RESPONDENT). (4 EMPLOYEES).

3983-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PUMPS AND SOFTENERS LIMITED (RESPONDENT). (4 EMPLOYEES).

4007-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 46 (APPLICANT) V. SARNIA INSPECTION CO. LTD. (RESPONDENT). (11 EMPLOYEES).

4008-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA LOCAL UNION NO. 46 (APPLICANT) V. CANADIAN NONDESTRUCTIVE TESTING LTD. (RESPONDENT). (4 EMPLOYEES).

4010-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ROYCE ENTERPRISES LIMITED (RESPONDENT). (35 EMPLOYEES).

4020-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. INDU-TEST INSPECTION LIMITED (RESPONDENT). (6 EMPLOYEES).

4025-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. INTRUSION PREPAKT LIMITED - CONTRACTORS - ENGINEERS (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER) V. EMPLOYEE (OBJECTORS). (4 EMPLOYEES).

4054-73-R: CORNELIUS WOHLGEMUTH ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, LOCAL 173 (RESPONDENT) V. DARE FOODS (BISCUIT DIVISION) LIMITED (INTERVENER). (335 EMPLOYEES).

4062-73-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. ORILLIA TOOL AND STAMPING LIMITED (RESPONDENT). (7 EMPLOYEES).

4073-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 804 (APPLICANT) V. F. A. TUCKER (ONTARIO) LTD. (RESPONDENT). (8 EMPLOYEES).

4085-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. MAZZUCA'S GROCETERIA LTD. (RESPONDENT). (10 EMPLOYEES).

4088-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DAVID L. COATSWORTH LTD. (RESPONDENT). (7 EMPLOYEES).

4101-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. JOHANN KELLER CANADA LTD. (RESPONDENT). (3 EMPLOYEES).

4121-73-R: EMPLOYEES' ASSOCIATION OF ETHYL CORPORATION OF CANADA LTD. (APPLICANT) V. ETHYL CORPORATION OF CANADA LTD. (RESPONDENT). (79 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING JULY

3464-72-R: LARRY MACKENZIE (APPLICANT) V. HYDRAULIC HIGH PRESSURE WATER CLEANING AND CHEMICAL CLEANING DIVISION OF THE BROTHERHOOD OF PAINTERS AND ALLIED TRADES OF AMERICA, LOCAL 1590 (RESPONDENT) V. C. H. HEIST (CANADA) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF C.H. HEIST (CANADA) LIMITED WORKING OUT OF THE EMPLOYER'S SARNIA OFFICE IN THE HYDRAULIC HIGH PRESSURE WATER CLEANING PROCESSES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, SALARIED EMPLOYEES AND THOSE ABOVE THE RANK OF FOREMAN WITH THE RIGHT TO HIRE AND FIRE." (39 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST

34

NUMBER OF PERSONS WHO CAST BALLOTS

31

NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT

1

NUMBER OF BALLOTS MARKED AGAINST RESPONDENT

30

3542-73-R: FRED WEPPLER, TIM SMITH, BERNARD STEVENSON, AND LARRY HAMEL (APPLICANTS) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (RESPONDENT) V. SEVEN-UP (ONTARIO) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF SEVEN-UP (ONTARIO) LIMITED AT LONDON, HAMILTON, KITCHENER, WATERLOO AND WELLAND, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	11	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	24	

3732-73-R: WERNER BECK, BERNARD MASSE, LUTZ REITER, GEORGE RYAN, REPRESENTATIVES OF GROUP APPLYING FOR DE-CERTIFICATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1393 (RESPONDENT) V. UNIVERSITY OF WINDSOR (INTERVENER). (DISMISSED).

UNIT: "ALL LAY EMPLOYEES OF THE UNIVERSITY OF WINDSOR SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN; FULL AND PART-TIME OFFICERS OF INSTRUCTION TOGETHER WITH INSTRUCTORS, SESSIONAL APPOINTEES, TEACHING ASSISTANTS AND POST DOCTORAL FELLOWS ENGAGED IN TEACHING AND/OR RESEARCH; PERSONS EMPLOYED TO UNDERTAKE SPECIFIC SPONSORED RESEARCH PROJECTS; PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK; STUDENTS; PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, THE LIBRARY, AND THE OFFICE OF DUPLICATING SERVICES; THE FACILITIES MANAGER AND ASSISTANT FACILITY MANAGER FACULTY OF PHYSICAL AND HEALTH EDUCATION AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1958; CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102 AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1001 AND THE CLERICAL, SECRETARIAL AND OFFICE PERSONNEL COVERED BY THE BARGAINING UNIT DESCRIBED IN A CERTAIN APPLICATION FOR CERTIFICATION MADE BY C.U.P.E." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		53
NUMBER OF PERSONS WHO CAST BALLOTS	47	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	27	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	20	

3849-73-R: JACQUES BOLDOC (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT) V. DU PONT OF CANADA, LIMITED, MAITLAND WORKS (INTERVENER). (GRANTED).

UNIT: "ALL ENGINE ROOM OPERATORS, BOILER OPERATORS, PULVERIZER OPERATORS, WATER EQUIPMENT OPERATORS, GENERAL OPERATORS, COALING OPERATORS AND STATIONARY ENGINEERS EMPLOYED BY DU PONT OF CANADA, LIMITED, MAITLAND WORKS IN THE POWER GROUP AT AN HOURLY RATE SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0

4038-73-R: GREEN GIANT OF CANADA LIMITED (APPLICANT) V. CANADIAN FOOD AND ALLIED WORKERS, LOCAL P 596 (RESPONDENT). (1 EMPLOYEE). (GRANTED).

4039-73-R: W.L. McDONALD, E.E. BARRIE, T.O. CLEGG (APPLICANTS) V. INT'L ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (RESPONDENT) V. OUTDOOR LEISURELAND OF THUNDER BAY LTD. (INTERVENER). (3 EMPLOYEES). (DISMISSED).

4067-73-R: HOWDEN PARSONS LIMITED (APPLICANT) V. THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (RESPONDENT). (9 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

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3237-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3238-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN HANSON LIMITED (RESPONDENT). (GRANTED).

3239-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3240-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3242-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CAMPBELL MANUFACTURING COMPANY LIMITED (RESPONDENT). (GRANTED).

3252-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3253-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3254-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ANSON GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

3255-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3256-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN OXYGEN LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

3257-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

3258-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PENFOUND VARNISH COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

3279-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ARCWELD PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (PREDECESSOR TRADE UNION). (GRANTED).

3840-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1542 (APPLICANT) V. THE CORPORATION OF THE CITY OF WATERLOO (RESPONDENT). (GRANTED).

3965-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. OTTAWA CIVIC HOSPITAL (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

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4037-73-U: RELCON LIMITED (APPLICANT) V. LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AND A.F. AMIS (RESPONDENTS). (WITHDRAWN).

4081-73-U: THE WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1946 AND DAVID NOBLE (RESPONDENTS). (GRANTED).

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3966-73-U: LONDON BUILDING AND CONSTRUCTION TRADES COUNCIL (APPLICANT) V. B.I.B. CONSTRUCTION LTD. (RESPONDENT). (DISMISSED).

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3383-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. SENTRY DEPARTMENT STORES LIMITED (RESPONDENT). (DISMISSED).

3415-72-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BARTON PLACE NURSING HOME (RESPONDENT). (DISMISSED).

3416-72-U: MR. ANTONY PAPAGEORGIOUS (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 2900 (RESPONDENT) V. JOHN INGLIS CO. LTD. (INTERVENER). (DISMISSED).

3509-72-U: ANTHONY COLASURDO (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND W. G. HARDY (LOCAL 353) (RESPONDENT). (WITHDRAWN).

3543-73-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ILSCO OF CANADA LIMITED (RESPONDENT). (GRANTED).

3634-73-U: CRESCENZO BOTTICELLA (COMPLAINANT) V. TEAMSTERS LOCAL UNION 647 (MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES) (RESPONDENT). (WITHDRAWN).

3720-73-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. THE BUDD AUTOMOTIVE COMPANY OF CANADA LIMITED (RESPONDENT). (DISMISSED).

3758-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BEACON HILL LODGE OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

3822-73-U: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (COMPLAINANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT). (GRANTED).

3826-73-U: THE NEWSPAPER GUILD (COMPLAINANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPER LTD.) (RESPONDENT). (WITHDRAWN).

3872-73-U: LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. DARRIGO'S FOOD MARKETS ONTARIO LIMITED (RESPONDENT). (WITHDRAWN).

3922-73-U: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (COMPLAINANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT). (WITHDRAWN).

4015-73-U: BREWERY WORKERS LOCAL #278 (COMPLAINANT) V. CANADA DRY BOTTLING Co., (WINDSOR), LTD. (RESPONDENT). (WITHDRAWN).

4036-73-U: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (COMPLAINANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT). (WITHDRAWN).

4080-73-U: FERNAND DUHAMEL (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (RESPONDENT). (WITHDRAWN).

4166-73-U: STEVE MASIUK (COMPLAINANT) V. FMC OF CANADA LIMITED, LINK BELT SPEEDER DIVISION (RESPONDENT). (DISMISSED).

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3869-73-M: HILLEBRAND WILSTRA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL No. 1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

3973-73-M: ANCHOR TEXTILES LIMITED (EMPLOYER) V. LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

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3079-72-R: LOCAL UNION 2345 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE REGIONAL MUNICIPALITY OF WATERLOO AND THE CORPORATION OF THE CITY OF CAMBRIDGE (RESPONDENTS) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 32 (INTERVENER #2). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF WATERLOO IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN AND CHIEF OPERATORS, PERSONS ABOVE THE RANK OF FOREMAN AND CHIEF OPERATOR, OFFICE, CLERICAL AND LABORATORY STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS		50
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68	46	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	3	

UNIT: "ALL EMPLOYEES OF THE CORPORATION OF THE CITY OF CAMBRIDGE IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS		24
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	16	

3129-72-R: LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANTS) V. DARRIGO'S FOOD MARKETS ONTARIO LTD. (RESPONDENT) V. BUSY B DISCOUNT FOODS LIMITED (PREDECESSOR EMPLOYER). (WITHDRAWN).

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3362-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGMILLER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

3682-73-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL UNION No. 1703 - C.L.C. (APPLICANT) V. UNDERWRITERS' LABORATORIES OF CANADA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTOS). (REQUEST DENIED).

3721-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TOLEDO SCALE DIVISION OF RELIANCE ELECTRIC LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - LOCK-OUT

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APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

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- AND -

3195-72-U: JOHN ROUSSEL (COMPLAINANT) V. THAMES VALLEY BEVERAGES (LONDON, ONTARIO) (RESPONDENT). (REQUEST DENIED).

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LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. v. BONNIE BRAE NURSING HOME LIMITED v. GROUP OF EMPLOYEES..... 415

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v. EMPLOYEES (OBJECTOR).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F.
 ADE AND E. BOYER.

DECISION OF THE BOARD: August 1, 1973.

1. BY ITS DECISION DATED MAY 4, 1973 THE BOARD AUTHORIZED MR. H. C. DRAPER, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND THE LIST OF EMPLOYEES ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT ON THE DATE THE APPLICATION WAS MADE. THE APPLICANT HAD PROPOSED THAT THE BARGAINING UNIT BE DESCRIBED AS ALL EMPLOYEES OF THE RESPONDENT WORKING AT THE RESPONDENT'S GRAVEL PIT AND CRUSHING PLANT AT HIGHWAY 105 - 17 MILES SOUTH OF RED LAKE, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. IT WOULD APPEAR THAT THE RESPONDENT OPERATES ANOTHER GRAVEL PIT IN THE GENERAL AREA OFF HIGHWAY 105. AN THE EXAMINER'S HEARING THE RESPONDENT OBJECTED TO THE EXAMINER INQUIRING INTO MATTERS WHICH PERTAIN TO THE SECOND GRAVEL PIT.

2. THE EXAMINER RULED THAT SUCH QUESTIONS WERE RELEVANT SINCE THE EXAMINER HAD BEEN AUTHORIZED TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES AS CONTAINED IN THE LETTER FROM THE RESPONDENT DATED JUNE 28, 1973 AND THE LETTER FROM THE APPLICANT DATED JULY 13, 1973, WE FIND THAT THE EXAMINER'S AUTHORITY TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT IS BROAD ENOUGH TO ENCOMPASS QUESTIONS CONCERNING BOTH GRAVEL PITS. SINCE THE BOARD HAS NOT DETERMINED THE COMPOSITION OF THE BARGAINING UNIT, IT HAS YET TO DEFINE WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT. DEPENDING ON THE FACTS OF THE CASE IT MAY BE THAT THE EMPLOYEES AT BOTH GRAVEL PITS OUGHT TO BE INCLUDED IN ONE BARGAINING UNIT. UNTIL SUCH TIME AS ALL THE FACTS ARE AVAILABLE THE BOARD WILL BE UNABLE TO DETERMINE THE COMPOSITION OF THE APPROPRIATE BARGAINING UNIT IN THIS MATTER AND THE BOARD THEREFORE DIRECTS THE EXAMINER TO CONTINUE HIS EXAMINATION AS AUTHORIZED BY THE BOARD'S DECISION OF MAY 4, 1973 AND INQUIRE INTO ALL MATTERS WHICH RELATE TO THE COMPOSITION OF THE APPROPRIATE BARGAINING UNIT INCLUDING MATTERS PERTAINING TO ALL OF THE RESPONDENT'S GRAVEL PIT AND CRUSHING PLANT OPERATIONS ON HIGHWAY 105 IN THE RED LAKE AREA, INCLUDING THE EXTENT OF INTERCHANGE, IF ANY, BETWEEN THE EMPLOYEES EMPLOYED AT THE VARIOUS LOCATIONS WHERE THE RESPONDENT OPERATES ITS GRAVEL PITS AND CRUSHING PLANTS.

3186-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION LOCAL
220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) v. BONNIE BRAE NURSING
HOME LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND E.
 BOYER.

APPEARANCES AT THE HEARING: TED WOHL AND AL CAMPBELL FOR THE APPLICANT; MICHAEL E. MITCHELL AND AUSTIN HERMAN FOR THE RESPONDENT; L. RAY WALLER AND WILLARD GERBER FOR THE GROUP OF EMPLOYEES.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:
AUGUST 1, 1973.

1. THE APPLICANT IN THIS MATTER HAS MADE A REQUEST TO BE CERTIFIED WITHOUT THE TAKING OF A REPRESENTATION VOTE PURSUANT TO THE STATUTORY POWER VESTED IN THE BOARD UNDER SECTION 7(4) OF THE LABOUR RELATIONS ACT. THE BASIS OF THIS REQUEST IS THAT CERTAIN CONDUCT BY THE RESPONDENT EMPLOYER HAS RESULTED IN A SITUATION WHERE THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY THE TAKING OF A REPRESENTATION VOTE.

2. AT THE HEARING IN THIS MATTER COUNSEL FOR THE APPLICANT, RESPONDENT AND THE GROUP OF EMPLOYEES, AGREED WITH THE FACTS AS SET OUT IN THE BOARD'S DECISION IN ANOTHER CASE INVOLVING THE PRESENT RESPONDENT (BONNIE BRAE NURSING HOME LIMITED CASE, BOARD FILE NO. 3207-72-U, DATED APRIL 18, 1973), SHOULD BE APPLIED IN THE PRESENT CASE. THAT CASE WAS A COMPLAINT UNDER SECTION 79 OF THE ACT AND IN THE DECISION REFERRED TO THE BOARD FOUND THAT TWO EMPLOYEES, GLORIA DELLOW AND NELLIE SCHELLENBACK WERE DISCHARGED CONTRARY TO SECTION 58(A) OF THE ACT BECAUSE OF THEIR SUPPORT FOR THE COMPLAINANT UNION IN THAT CASE (THE APPLICANT IN THE PRESENT CASE). THE EVIDENCE UPON WHICH THIS FINDING IS BASED IS FULLY SET OUT IN THAT DECISION OF THE BOARD AND NEED NOT BE SET OUT HERE. WE SHALL, HOWEVER, REFER TO CERTAIN OF THOSE FINDINGS LATER IN THIS DECISION.

3. IN ADDITION TO THE FACTS AGREED UPON BY THE PARTIES THE APPLICANT ADDUCED ADDITIONAL EVIDENCE IN SUPPORT OF ITS REQUEST FOR THE APPLICATION OF SECTION 7(4) OF THE ACT. THESE FACTS INDICATE THAT DURING THE AFTER-NOON OF FEBRUARY 1, 1973, A MEETING OF ALL OF THE EMPLOYEES OF THE RESPONDENT WAS HELD AT THE RESPONDENT'S PREMISES. THIS MEETING WAS APPARENTLY CALLED TO DEAL WITH CERTAIN DIFFICULTIES IN THE RELATIONS BETWEEN THE RESPONDENT AND ITS EMPLOYEES. ALTHOUGH IT WAS SUGGESTED BY THE RESPONDENT THAT THIS WAS AN ORDINARY STAFF MEETING, THE EVIDENCE BEFORE THE BOARD IS THAT IT WAS THE FIRST SUCH MEETING CALLED IN AT LEAST THREE YEARS, AND AS SUCH IT WAS CERTAINLY NO ORDINARY OCCURENCE.

4. HOWEVER, BEFORE DEALING WITH THE AFFECT OF THIS MEETING AND THE FACTS AS FOUND IN THE UNFAIR PRACTICE CASE REFERRED TO, WE CAN DEAL WITH ANOTHER MATTER RAISED BY THE APPLICANT IN SUPPORT OF ITS CONTENTION THAT A VOTE WILL NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES. THE APPLICANT ADDUCED EVIDENCE CONCERNING THE INSTALLATION OF A TIME CLOCK ON OR ABOUT FEBRUARY 15, 1973. THE INSTALLATION OF THIS TIME CLOCK CHANGED THE METHOD OF REPORTING IN AND OUT FOR THE VARIOUS EMPLOYEES OF THE RESPONDENT. ALTHOUGH THE RESPONDENT LED EVIDENCE TO SUGGEST THAT SUCH INSTALLATION HAD BEEN CONTEMPLATED ALMOST A HALF YEAR PRIOR TO THE ACTUAL INSTALLATION OF THE TIME CLOCK, THE EVIDENCE PRESENTED WAS AT BEST HEARSAY EVIDENCE ON THE PART OF MR. HERMAN AND THERE WERE NO DOCUMENTS MADE IN THE ORDINARY

COURSE OF BUSINESS TO SUPPORT HIS CONTENTION. THE APPLICANT ARGUED THAT THE INSTALLATION OF SUCH A TIME CLOCK WAS IN ITSELF AN UNFAIR PRACTICE BECAUSE IT WAS DONE AFTER THE DATE OF THE MAKING OF THE PRESENT APPLICATION AND THUS CONSTITUTES A VIOLATION OF SECTION 70(2) OF THE ACT. WE ARE NOT CONVINCED THAT SUCH CONDUCT OF THE EMPLOYER CONSTITUTES A CHANGE IN THE RIGHTS, PRIVILEGES AND DUTIES OF EITHER THE EMPLOYEES OR THE EMPLOYER. HOWEVER, WE DECLINE TO MAKE ANY DETERMINATION ON THIS MATTER. EVEN IF WE WERE TO FIND A VIOLATION OF SECTION 70(2) OF THE ACT THIS WOULD NOT BE SUFFICIENT TO PREVENT THE EMPLOYEES FROM EXPRESSING THEIR TRUE WISHES IN A REPRESENTATION VOTE.

5. HOWEVER, THE BASIS OF THE APPLICANT'S CLAIM TO RELIEF UNDER SECTION 7(4) IS THAT THE DISCHARGE OF THE TWO EMPLOYEES FOR ACTIVITY IN SUPPORT OF THE TRADE UNION TOGETHER WITH THE OTHER EVENTS DESCRIBED AMOUNT TO SUCH UNDUE INFLUENCE ON THE EMPLOYEES THAT THEIR TRUE WISHES WOULD NOT BE EXPRESSED IN A REPRESENTATION VOTE. TURNING TO THE FACTS SET OUT IN THE BOARD'S DECISION IN BOARD FILE No. 3207-72-U, THAT DECISION INDICATES THAT GLORIA DELLOW WAS DISCHARGED FOR TRADE UNION ACTIVITY ON JANUARY 31, 1973, AND THAT NELLIE SCHELLENBACK WAS DISCHARGED FOR TRADE UNION ACTIVITY ON FEBRUARY 1, 1973 BEFORE SHE HAD AN OPPORTUNITY TO REPORT FOR WORK. ON THE OTHER HAND THE MEETING OF THE EMPLOYEES OF FEBRUARY 1, 1973, WAS CALLED FOR ALL THE EMPLOYEES OF THE RESPONDENT WHETHER OR NOT THEY WERE AT WORK AT THE TIME OF THE MEETING, AND THESE TWO EMPLOYEES SINCE THEY HAD BEEN DISCHARGED WERE OBVIOUSLY NOT PRESENT. THE EVIDENCE IS THAT MR. JOHNSON ON BEHALF OF THE EMPLOYER DURING THAT MEETING SUGGESTED THAT ANYONE WHO WAS NOT SATISFIED WORKING FOR THE RESPONDENT COULD PICK UP THEIR CHEQUES THAT DAY. THIS REMARK FOLLOWING ON THE HEELS OF THE DISCHARGE OF THE TWO EMPLOYEES FOR ACTIVITY IN SUPPORT OF THE APPLICANT TRADE UNION NOT ONLY MADE IT CLEAR TO THE EMPLOYEES THE POSITION OF THE EMPLOYER WITH RESPECT TO THE APPLICANT'S CAMPAIGN, BUT ALSO MADE IT CLEAR TO THE EMPLOYEES THAT THE EMPLOYER WAS PREPARED TO TAKE DRASTIC STEPS WITH RESPECT TO SUPPORTERS OF THE APPLICANT TRADE UNION.

6. IN SUCH CIRCUMSTANCES AND HAVING REGARD TO THE REASONS CONTAINED IN THE UNDERWOOD MANUFACTURING COMPANY LIMITED CASE, 52 CLLC 17,040, WE FIND THAT THE RESPONDENT'S CONDUCT HAS EXERTED UNDUE INFLUENCE UPON THE EMPLOYEES THAT WOULD TEND TO SO AFFECT THE EMPLOYEES IN THE BARGAINING UNIT AS TO MAKE IT UNLIKELY THAT A REPRESENTATION VOTE WOULD DISCLOSE A FREE EXPRESSION OF THEIR TRUE WISHES.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 8, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. SINCE WE ARE SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES

ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE AND THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT, WE ARE THEREFORE OF THE OPINION THAT THE APPLICANT IS ENTITLED TO THE PROTECTION AFFORDED BY SECTION 7(4) OF THE LABOUR RELATIONS ACT AND TO BE CERTIFIED WITHOUT THE TAKING OF A REPRESENTATION VOTE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.D. BELL: August 1, 1973.

1. I DO NOT AGREE WITH THE MAJORITY OF THE BOARD THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

2. THE BASIS OF THE APPLICANT'S CLAIM TO RELIEF UNDER SECTION 7(4) IS THAT THE DISCHARGE OF TWO EMPLOYEES, ONE ON JANUARY 31, 1973, AND THE OTHER ON FEBRUARY 1, 1973, WERE FOR TRADE UNION ACTIVITY. IN ADDITION A REMARK WAS MADE BY A MR. JOHNSON AT A MEETING OF EMPLOYEES ON FEBRUARY 1, 1973. THESE ACTIONS OCCURRED SOME SIX MONTHS AGO AND WERE THE SUBJECT OF A BOARD DECISION DATED APRIL 18, 1973.

3. IT IS MY OPINION THAT ANY IMPACT THESE ACTIONS MAY HAVE ON THE EMPLOYEES AT THAT TIME HAS BEEN NULLIFIED BY THE SUBSEQUENT EVENTS, I.E., THE REINSTATEMENT OF THE EMPLOYEES CONCERNED AND THE REMOVAL OF MR. JOHNSON FROM THE DAY TO DAY ADMINISTRATION OF THE NURSING HOME, AND ALSO BY THE PASSAGE OF TIME.

4. I ALSO BELIEVE THAT THESE EMPLOYEES WOULD NOT BE PARTICULARLY SUSCEPTIBLE TO THE VIEWS OF THE RESPONDENT TO ANY GREATER DEGREE THAN THEY WOULD BE TO THE VIEWS OF THE APPLICANT IN MAKING THEIR DECISION HOW TO CAST THEIR SECRET BALLOT.

5. ACCORDINGLY I WOULD DIRECT A REPRESENTATION VOTE BE TAKEN IN ACCORDANCE WITH SECTION 7(2) OF THE LABOUR RELATIONS ACT.

3686-73-U: STANLEY DWYER (COMPLAINANT) V. UNITED AUTOMOBILE WORKERS, LOCAL 1285 AND KENNETH J. CALVER (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: STANLEY DWYER APPEARING FOR THE COMPLAINANT; LARRY SHEFFE, J. PETERS AND K. CALVER APPEARING FOR THE RESPONDENTS.

DECISION OF THE BOARD: August 2, 1973.

1. THE NAME "STANLEY DWYER, 3 RAPALLO MEWS, STREETSVILLE, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE COMPLAINANT IS AMENDED TO READ: "STANLEY DWYER".

2. THE NAMES "UNITED AUTOMOBILE WORKERS, LOCAL 1285 AND KENNETH J. CALVER, 6 BEECH ST., BRAMPTON, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENTS ARE AMENDED TO READ: "UNITED AUTOMOBILE WORKERS, LOCAL 1285 AND KENNETH J. CALVER".

3. THE COMPLAINANT COMPLAINS THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE LABOUR RELATIONS ACT AND REQUESTS THAT HE BE REIMBURSED BY THE RESPONDENTS FOR EIGHT HOURS' PAY AT TIME AND ONE-HALF HIS REGULAR RATE. THE FACTS OF THIS CASE ARE AS FOLLOWS. STANLEY DWYER, THE COMPLAINANT, WAS EMPLOYED BY CHRYSLER CANADA LTD. AS A WAREHOUSEMEN AT ITS REXDALE PARTS DEPOT AND WAS COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN CHRYSLER CANADA LTD. AND THE RESPONDENT UNION AT ALL RELEVANT TIMES. ON JANUARY 2, 1973 CHRYSLER CANADA LTD. POSTED NOTICE THAT OVERTIME WOULD BE AVAILABLE FOR EMPLOYEES ON SATURDAY, JANUARY 6, 1973. ON FRIDAY, JANUARY 5, 1973 THE COMPLAINANT'S FOREMAN ALONG WITH THE UNION COMMITTEE MAN APPROACHED THE COMPLAINANT AND ADVISED HIM THAT THE ONLY WORK TO BE PERFORMED ON THE SATURDAY WAS "DEPOT PICKING". THE COMPLAINANT, BECAUSE OF A PHYSICAL CONDITION, HAD CONSISTENTLY REFUSED TO PERFORM "DEPOT PICKING" WORK. ON THIS OCCASION THE COMPLAINANT AGAIN STATED HE WOULD NOT DO "DEPOT PICKING".

4. IT WAS THE COMPLAINANT'S VIEW THAT THERE WAS SUFFICIENT WORK IN PACKAGING WHICH WAS THE WORK REGULARLY PERFORMED BY THE COMPLAINANT AS A MAINTENANCE MAN AND HE THEREFORE CLAIMED THAT HE WAS ENTITLED TO WORK OVERTIME ON PACKAGING.

5. WHEN THE COMPLAINANT WAS ADVISED THAT NO PACKAGING WORK WOULD BE PERFORMED ON THE SATURDAY BUT ONLY DEPOT PICKING WORK WAS AVAILABLE, THE COMPLAINANT ASKED THE UNION COMMITTEE MAN FOR A GRIEVANCE FORM. THE UNION COMMITTEE MAN REFUSED TO GIVE THE COMPLAINANT A GRIEVANCE FORM.

6. THE EVIDENCE ESTABLISHED, HOWEVER, THAT AFTER REFUSING TO GIVE THE COMPLAINANT A GRIEVANCE FORM THE COMMITTEE MAN APPROACHED THE OPERATIONS MANAGER OF THE COMPANY IN ORDER TO ASCERTAIN WHETHER THE COMPLAINANT COULD BE BROUGHT IN TO DO THE OVERTIME WORK ON SATURDAY AND PERFORM HIS REGULAR PACKAGING FUNCTIONS. AFTER INVESTIGATING WHAT PACKAGING WORK WAS AVAILABLE IT WAS ASCERTAINED THERE WAS ONLY SUFFICIENT ITEMS READY FOR PACKAGING TO OCCUPY A MAN FOR APPROXIMATELY THREE-QUARTERS OF AN HOUR. SINCE THE COMPLAINANT WAS NOT PREPARED TO PERFORM WAREHOUSING WORK OTHER THAN PACKAGING THE COMPANY'S OPERATIONS MANAGER DECIDED THAT IT WOULD NOT BE JUSTIFIED IN BRINGING AN EMPLOYEE IN FOR EIGHT HOURS TO DO LESS THAN AN HOUR'S WORK.

7. THE COMPLAINANT FURTHER ARGUED THAT THE NOTICE OF THE OVERTIME WORK WAS FOR "SCHEDULED" OVERTIME AND ACCORDINGLY EVERYONE IN THE BARGAINING UNIT WAS ENTITLED TO THE OVERTIME WORK. ALL THE OTHER WITNESSES, HOWEVER, TESTIFIED THAT THE OVERTIME WORK WAS NOT "SCHEDULED" OVERTIME WORK. THE NOTICE OF THE OVERTIME MERELY STATED THAT OVERTIME WORK WAS "AVAILABLE". IT FURTHER APPEARS THAT ONLY EIGHT OR NINE OF THE CREW OF TWENTY-THREE EMPLOYEES WORKED OVERTIME ON SATURDAY, JANUARY 6.

8. HAVING REGARD TO ALL THE EVIDENCE, ESPECIALLY IN VIEW OF THE FACT THAT LESS THAN HALF THE EMPLOYEES OF THE CREW IN THE AREA IN WHICH THE COMPLAINANT WORKED REPORTED FOR OVERTIME WORK ON SATURDAY, WE FIND THAT SUCH OVERTIME WORK WAS VOLUNTARY RATHER THAN SCHEDULED OVERTIME AS ALLEGED BY THE COMPLAINANT.

9. WE FURTHER FIND THAT EVEN IF THE OVERTIME WORK HAD BEEN SCHEDULED OVERTIME RATHER THAN VOLUNTARY OVERTIME THE COMPANY HAD THE RIGHT TO DETERMINE WHAT WORK WAS TO BE PERFORMED ON JANUARY 6. SINCE THE COMPANY DETERMINED THAT ONLY DEPOT PICKING WAS TO BE PERFORMED, THE COMPLAINANT HAD NO RIGHT TO INSIST ON PERFORMING HIS REGULAR PACKAGING WORK SINCE THIS WAS NOT A PART OF THE DEPOT PICKING THAT WAS PERFORMED. NO ONE PERFORMED PACKAGING ON JANUARY 6. WE ACCORDINGLY FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT HE HAD A PROPER GRIEVANCE IN THIS MATTER.

10. WHILE IT MAY BE THAT THE UNION COMMITTEE MAN'S REFUSAL TO GIVE THE COMPLAINANT A GRIEVANCE FORM WAS MISGUIDED, IT IS CLEAR FROM THE EVIDENCE THAT HE ATTEMPTED TO DO EVERYTHING POSSIBLE TO ARRANGE FOR THE COMPLAINANT TO PERFORM OVERTIME WORK IN HIS REGULAR JOB ON JANUARY 6. THERE HAS ACCORDINGLY BEEN NO FAILURE ON THE PART OF THE RESPONDENTS TO FAIRLY REPRESENT THE COMPLAINANT IN HIS RELATIONS WITH CHRYSLER CANADA LTD. INDEED, IT IS NOTED THAT IN THE SEVEN MONTHS PRIOR TO THE HEARING IN THIS MATTER THE UNION HAS PROCESSED SEVENTEEN GRIEVANCES FROM THE COMPLAINANT AND FOUR OF THESE ARE SCHEDULED FOR ARBITRATION. THIS BOARD HAS NO WAY OF KNOWING WHETHER ANY OF THE SEVENTEEN GRIEVANCES WHICH WERE PROCESSED BY THE UNION HAVE MORE MERIT THAN THE COMPLAINANT'S COMPLAINT IN THIS CASE. HOWEVER THAT MAY BE, THE FACTS FAILED TO ESTABLISH EVEN IF A GRIEVANCE WAS FILED ON BEHALF OF THE COMPLAINANT UNION AND PROPERLY PROCESSED THROUGH ARBITRATION THAT AN ARBITRATION BOARD WOULD UPHOLD THE COMPLAINANT'S CLAIM FOR OVERTIME WORK ON THE FACTS OF THIS CASE SINCE THE GRIEVOR CLAIMED THAT HE WAS NOT PHYSICALLY ABLE TO PERFORM ANY OF THE OVERTIME WORK THAT WAS ACTUALLY DIRECTED BY THE COMPANY ON JANUARY 6.

11. FOR THESE REASONS, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON HIM OF ESTABLISHING THAT THE RESPONDENTS HAVE CONTRAVENED THE PROVISIONS OF SECTION 60 OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS THEREFORE DISMISSED.

3329-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD:

AUGUST 3, 1973.

1. THE PARTIES RECORDED WITH THE EXAMINER APPOINTED IN THIS MATTER THEIR AGREEMENT AS TO THE APPROPRIATE BARGAINING UNIT IN THE INSTANT CASE, SUBJECT TO A DECISION OF THE BOARD AS TO THE INCLUSION OR EXCLUSION OF

"PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". WITH RESPECT TO THE FOREGOING CLASSIFICATION, AT THE HEARING OF THE APPLICATION ON MARCH 12, 1973, COUNSEL FOR THE RESPONDENT REQUESTED THE EXCLUSION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". COUNSEL FOR THE APPLICANT OPPOSED THE SAID EXCLUSION ON THE GROUNDS THAT THE RESPONDENT HAD NO HISTORY OF EMPLOYING PERSONS IN THIS CLASSIFICATION. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE RESPONDENT HAD JUST COMMENCED ITS OPERATIONS AND WAS IN THE PROCESS OF BUILDING UP ITS WORK FORCE, BUT ADMITTED THAT THE RESPONDENT HAD NO SPECIFIC PLANS TO HIRE PART-TIME EMPLOYEES. BY LETTERS DATED JULY 5 AND 11, 1973 COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT HAD NO OBJECTION TO THE EXCLUSION OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK PROVIDED THAT THE RESPONDENT HAD EMPLOYEES IN THIS CLASSIFICATION.

2. IN ITS DECISION OF MARCH 22, 1973, THE BOARD FOUND ON THE EVIDENCE BEFORE IT THAT THE RESPONDENT HAD A PLANNED PROGRAM TO INCREASE ITS WORK FORCE AND THAT THERE WAS A REAL PROBABILITY THAT THE INCREASE WOULD TAKE PLACE WITHIN A SPECIFIC PERIOD. THE BOARD ACCORDINGLY DIRECTED THAT THE RESPONDENT REPORT TO THE BOARD PERIODICALLY ON THE NUMBER OF PERSONS IN ITS EMPLOY AND THEIR JOB CLASSIFICATIONS COMMENCING ON MAY 1, 1973 AND EVERY FIFTEEN DAYS THEREAFTER UNTIL THE BOARD OTHERWISE DIRECTED. THE BOARD HAS SINCE RECEIVED SEVEN REPORTS ON THE BUILD-UP OF THE WORK FORCE OF THE RESPONDENT, THE MOST RECENT ONE SHOWING IN SUMMARY FORM THE NUMBER OF ITS EMPLOYEES AS OF JULY 31, 1973. AS OF THAT DATE, THE REPORTS DO NOT REVEAL THAT ANY PART-TIME EMPLOYEES HAVE BEEN HIRED NOR IS THERE ANY INDICATION THAT ANY SUCH EMPLOYEES WILL BE HIRED BY THE END OF AUGUST, WHEN THE PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT IS SCHEDULED TO BE COMPLETED. IN THESE CIRCUMSTANCES, HAVING REGARD TO THE POSITION OF THE APPLICANT AND THE BOARD'S PRACTICE, WE ARE NOT PREPARED TO EXCLUDE THE CLASSIFICATION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 19, 1973, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS SHEBANDOWAN MINE AND MILL OPERATION, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS EMPLOYED IN THE MINE ENGINEERING DEPARTMENT, MINE EXPLORATION DEPARTMENT, ADMINISTRATION DEPARTMENT AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION OF DRYMAN IS INCLUDED IN THE BARGAINING UNIT.

5. WITH REGARD TO THE PLANNED BUILD-UP, THE RESPONDENT ANTICIPATED THAT IT WOULD HAVE 63 EMPLOYEES IN FIVE CLASSIFICATIONS BY THE END OF MAY IN ITS MAINTENANCE DEPARTMENT. AS OF JULY 31, 1973, THE RESPONDENT HAD

62 EMPLOYEES IN SIX CLASSIFICATIONS IN ITS MAINTENANCE DEPARTMENT. THE RESPONDENT ALSO ANTICIPATED THAT BY SOME TIME IN MAY IT WOULD HAVE 24 EMPLOYEES IN ITS MILL IN FOUR CLASSIFICATIONS. AS OF JULY 31, 1973 THE RESPONDENT HAD 20 EMPLOYEES IN ITS MILL OPERATIONS IN THREE CLASSIFICATIONS. IN ITS MINE OPERATIONS THE RESPONDENT PLANNED TO HAVE 30 EMPLOYEES BY THE END OF JUNE, 120 EMPLOYEES BY THE END OF JULY AND 192 EMPLOYEES BY NO LATER THAN THE END OF AUGUST. AS OF JULY 31, 1973, THE RESPONDENT ONLY HAD 84 EMPLOYEES IN ITS MINE OPERATIONS.

6. THE PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT BY AND LARGE HAS TAKEN PLACE WITH RESPECT TO ITS MAINTENANCE DEPARTMENT AND ITS MILL. THE BUILD-UP IN THE WORK FORCE OF THE MINE HAS NOT FULLY MATERIALIZED. HOWEVER, THE BUILD-UP HAS CONTINUED ALTHOUGH BEHIND SCHEDULE. AS OF THE DATE OF THE MAKING OF THE APPLICATION ON FEBRUARY 22, 1973 THE RESPONDENT HAD 28 EMPLOYEES IN THE BARGAINING UNIT. AS OF JULY 31, 1973, THE RESPONDENT HAD 166 EMPLOYEES WHICH IS MORE THAN HALF OF THE SCHEDULED TOTAL WORK FORCE OF 280 WHICH THE RESPONDENT ANTICIPATED BY NO LATER THAN THE END OF AUGUST.

7. IN THESE CIRCUMSTANCES AND TAKING PARTICULARLY INTO ACCOUNT THE FACT THAT THE RESPONDENT HAS VIRTUALLY ITS FULL COMPLEMENT OF EMPLOYEES IN ITS MAINTENANCE AND MILL OPERATIONS, NEARLY HALF OF ITS SCHEDULED WORK FORCE IN ITS MINING OPERATIONS, THE BOARD IS OF THE OPINION THAT THE APPROPRIATE TIME HAS COME TO DIRECT THE TAKING OF A REPRESENTATION VOTE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 5, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

3935-73-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: J. A. RYDER AND LES DOWLING FOR THE COMPLAINANT; EDWARD T. McDERMOTT FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 7, 1973.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGED THAT PAUL CHANDLER WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 3, 56, 58 AND 61 OF THE LABOUR RELATIONS ACT. THE RELEVANT FACTS OF THIS CASE ARE AS FOLLOWS. THE COMPLAINANT MADE APPLICATION FOR CERTAIN EMPLOYEES OF THE RESPONDENT INCLUDING MR. CHANDLER ON APRIL 17, 1973. MR. CHANDLER WAS EMPLOYED ON THE NIGHT SHIFT AND HELD THE POSITION OF KEY HOLDER AT THAT TIME. AS KEY HOLDER MR. CHANDLER WAS THE SENIOR EMPLOYEE ON THE NIGHT SHIFT AND HAD THE RESPONSIBILITY TO UNLOCK THE STORE AT THE COMMENCEMENT OF THE SHIFT AND LOCK UP THE STORE AT THE END OF THE SHIFT. HIS POSITION WAS EQUIVALENT TO THAT OF A LEAD HAND.
2. WHILE MR. CHANDLER WAS A MEMBER OF THE COMPLAINANT UNION, THERE IS NO EVIDENCE THAT WOULD TEND TO ESTABLISH THAT HE WAS THE LEADER AMONG THE EMPLOYEES DURING THE UNION'S ORGANIZING CAMPAIGN. MR. CHANDLER REFUSED TO SIGN A PETITION AT THE BEHEST OF THE ASSISTANT STORE MANAGER WHO WAS CLAIMED BY THE UNION TO BE INCLUDED IN THE BARGAINING UNIT.
3. THE EVIDENCE ESTABLISHED THAT PAUL WESTMAN, AN EMPLOYEE WHO WORKED PART-TIME ON THE NIGHT SHIFT WITH MR. CHANDLER, HAD BEEN APPROACHED BY THE STORE MANAGER TO SIGN A PETITION. MR. WESTMAN SIGNED THE PETITION; HOWEVER, SHORTLY THEREAFTER MR. WESTMAN ASKED THE STORE MANAGER OF THE RETURN OF THE PETITION HE SIGNED. WHEN THE PETITION WAS RETURNED TO HIM BY THE STORE MANAGER MR. WESTMAN DESTROYED IT.
4. APRIL 17 WAS MR. CHANDLER'S BIRTHDAY AS WELL AS THE DATE THE APPLICATION WAS MADE. ON THAT DATE MR. CHANDLER CELEBRATED HIS BIRTHDAY WITH ALCOHOLIC BEVERAGES AND APPARENTLY BECAME INTOXICATED. MR. CHANDLER REPORTED LATE FOR WORK AND, BECAUSE OF HIS CONDITION, LEFT WORK APPROXIMATELY FIVE HOURS BEFORE THE END OF HIS SHIFT. WHEN THE ABOVE FACTS CAME TO THE ATTENTION OF THE STORE MANAGER MR. CHANDLER WAS REPRIMANDED AND ADVISED THAT IF HE WERE TO MISS WORK AGAIN HE WOULD BE REQUIRED TO PRODUCE A DOCTOR'S CERTIFICATE.
5. ON OR ABOUT FRIDAY, MAY 24 MR. CHANDLER AND MR. WESTMAN INVOLVED IN HORSEPLAY WHICH RESULTED IN A GROCERY CART BEING KNOCKED AGAINST THE GLASS DOOR OF THE STORE CAUSING THE GLASS TO BREAK. WHEN THE BROKEN GLASS WAS REPORTED TO THE STORE MANAGER THE TRUE FACTS RELATING TO THE BREAKAGE WERE NOT IMMEDIATELY DISCLOSED. HOWEVER, AFTER FURTHER INQUIRIES WERE MADE, MR. CHANDLER AND MR. WESTMAN ACKNOWLEDGED THAT THEY WERE JOINTLY RESPONSIBLE FOR THE BROKEN GLASS AND AGREED TO SHARE IN THE COST OF REPLACING IT. WHEN ASKED TO SIGN A STATEMENT TO THIS EFFECT, HOWEVER, BOTH

MR. CHANDLER AND MR. WESTMAN REFUSED TO SIGN. NO ACTION WAS TAKEN AGAINST EITHER MR. CHANDLER OR MR. WESTMAN WITH RESPECT TO THE BROKEN GLASS.

6. ON MONDAY, JUNE 4, MR. CHANDLER WAS DUE TO REPORT FOR WORK AT 11:00 P.M. AS INDICATED ABOVE, MR. CHANDLER HAD THE KEY TO THE STORE AND A FELLOW EMPLOYEE WHO WAS TO WORK THE NIGHT SHIFT WITH HIM COULD NOT GAIN ENTRY UNTIL MR. CHANDLER ARRIVED. MR. CHANDLER OVERSLEPT AND HE WAS AWAKENED SOME TIME BETWEEN 11:45 AND 12:00 P.M. BY HIS BROTHER. THE STORE MANAGER WAS AT MR. CHANDLER'S RESIDENCE AT THAT TIME. AFTER MR. CHANDLER DRESSED AND CAME DOWN FROM HIS BEDROOM THE STORE MANAGER ASKED MR. CHANDLER WHETHER HE WAS SICK. WHEN MR. CHANDLER REPLIED THAT HE WAS NOT SICK BUT HAD OVERSLEPT, THE STORE MANAGER ADVISED MR. CHANDLER THAT HIS SERVICES WERE NO LONGER REQUIRED AND MR. CHANDLER WAS DISCHARGED. THE STORE MANAGER WAS NOT CALLED TO TESTIFY AND ALL OF THE ABOVE FACTS WERE ADDUCED THROUGH THE UNION'S WITNESSES.

7. IT WAS ARGUED ON BEHALF OF THE COMPLAINANT THAT IN VIEW OF THE CIRCUMSTANCES SURROUNDING THE DISCHARGE OF MR. CHANDLER, INCLUDING THE TIMING OF THE DISCHARGE FOLLOWING THE UNION'S ORGANIZING CAMPAIGN, THE OPPOSITION TO THE APPLICATION EVIDENCED BY THE EMPLOYER AND THE EVIDENCE CONCERNING A CHANGE IN ATTITUDE TOWARDS MR. CHANDLER FOLLOWING THE APPLICATION FOR CERTIFICATION, THAT SUCH EVIDENCE CAST A BURDEN OF EXPLANATION UPON THE EMPLOYER TO SATISFY THE BOARD WHY MR. CHANDLER WAS DISCHARGED. IN SUPPORT OF THIS PROPOSITION THE COMPLAINANT RELIED UPON THE DECISION OF THE BOARD IN RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND NATIONAL AUTOMATIC VENDING CO. LTD. CASE, 63 CLIC 116,278.

8. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT THAT MR. CHANDLER WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. IF THE RESPONDENT HAD BEEN WAITING FOR AN EXCUSE TO DISCHARGE MR. CHANDLER BECAUSE OF HIS UNION MEMBERSHIP IT HAD AN OPPORTUNITY TO DO SO WHEN MR. CHANDLER AND MR. WESTMAN BROKE THE GLASS DOOR WHILE ENGAGED IN HORSEPLAY. BOTH MR. CHANDLER AND MR. WESTMAN WERE KNOWN TO SUPPORT THE UNION; HOWEVER, NO ACTION WAS TAKEN AGAINST EITHER OF THEM BECAUSE OF THE INCIDENT INVOLVING THE BROKEN GLASS DOOR. ON THE OTHER HAND, WITHIN A PERIOD OF A MONTH AND A HALF MR. CHANDLER WAS INVOLVED IN THREE INCIDENCES WHICH MERITED DISCIPLINARY ACTION. HE REPORTED FOR WORK INTOXICATED AND LEFT EARLY WITHOUT PERMISSION ON APRIL 17. HE WAS INVOLVED IN THE HORSEPLAY INCIDENT ON MAY 24 AND APPROXIMATELY ONE WEEK LATE HE FAILED TO REPORT TO WORK EVEN THOUGH HE HAD THE RESPONSIBILITY OF OPENING THE STORE FOR A FELLOW EMPLOYEE. THESE THREE INCIDENCES WHICH TOOK PLACE OVER A RELATIVELY SHORT PERIOD OF TIME ESTABLISHED REASONABLE CAUSE FOR DISCHARGE. IN VIEW OF THIS EVIDENCE IT WAS THE RESPONDENT'S POSITION THAT THE STORE MANAGER HAD NOTHING FURTHER TO ADD BUT THAT THE FACTS SPOKE FOR THEMSELVES AND SUPPORTED THE RESPONDENT'S POSITION THAT IT HAD JUST CAUSE TO DISCHARGE MR. CHANDLER. WITH THIS POSITION WE AGREE. WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT AND THIS COMPLAINT IS THEREFORE DISMISSED.

3823-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT).

[RE: STRATHMERE LODGE, MIDDLESEX COUNTY HOME FOR AGED

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: August 7, 1973.

1. PURSUANT TO A DIRECTION CONTAINED IN A DECISION OF THE BOARD DATED JUNE 13, 1973, A REPRESENTATION VOTE WAS TAKEN AMONG A "PART-TIME" UNIT OF EMPLOYEES OF THE RESPONDENT EMPLOYED AT STRATHMERE LODGE AT STRATHROY ON JULY 11, 1973.

2. SUBSEQUENT TO THE TAKING OF THE VOTE, THE BOARD RECEIVED A LETTER DATED JULY 18, 1973 SIGNED BY SIX PERSONS PURPORTING TO BE PART-TIME GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT AT STRATHMERE LODGE. IN THE SAID LETTER, THE PART-TIME GRADUATE NURSES CONCERNED EXPRESSED THEIR OPPOSITION TO BEING INCLUDED IN THE BARGAINING UNIT FOR THE TAKING OF THE VOTE. IT WAS FURTHER ALLEGED IN THE LETTER INTER ALIA THAT THEY WERE NOT INFORMED OF THE VOTE AND ONLY THREE OF THE SIX OF THEM WERE GIVEN ANY SPECIFIC INFORMATION AS TO THE PURPOSE OF THE PROPOSED VOTE. THE LETTER FURTHER STATES THAT SINCE NO VOTERS' LIST WAS POSTED, THE SIGNATORIES TO THE LETTER QUESTIONED THE LEGALITY OF THE VOTE. THE LETTER FURTHER REQUESTED A HEARING BEFORE THE BOARD AND TO INFORM THE BOARD THAT THE PART-TIME GRADUATE NURSES HAVE NO DESIRE AS A GROUP TO BECOME UNIONIZED. BY A FURTHER LETTER DATED JULY 31, 1973, IN RESPONSE TO A LETTER FROM THE REGISTRAR DATED JULY 25, 1973 WHICH LETTER WAS IN REPLY TO THE ORIGINAL LETTER OF JULY 18, 1973, IT IS ALLEGED THAT ALTHOUGH THE NOTICE OF THE APPLICATION FOR CERTIFICATION FOR THE UNIT OF "PART-TIME" EMPLOYEES OF THE RESPONDENT AT STRATHMERE LODGE WAS POSTED ON OR ABOUT JULY 1, 1973, NO INSTRUCTIONS REGARDING ITS RAMIFICATIONS WERE RECEIVED FROM THE APPLICANT TRADE UNION UNTIL JULY 7, 1973 AND THAT IT WAS ONLY AT THAT POINT THAT THE PART-TIME GRADUATE NURSES REALIZED THEY WERE INCLUDED IN THE VOTE AND THAT SINCE NO CAMPAIGNING WAS ALLOWED THREE DAYS PRIOR TO THE TAKING OF THE VOTE, THE PART-TIME GRADUATE NURSES HAD NO OPPORTUNITY TO MAKE A UNITED EFFORT TO VOICE THEIR PROTEST.

3. BY WAY OF REVIEW OF THE PROCEEDINGS IN THIS MATTER, THE INSTANT APPLICATION FOR CERTIFICATION WAS MADE ON MAY 16, 1973, THE APPLICANT APPLIED FOR A BARGAINING UNIT COMPOSED OF PART-TIME EMPLOYEES OF THE RESPONDENT AT STRATHMERE LODGE AT STRATHORY, WITH CERTAIN PROPOSED EXCLUSIONS FROM THE UNIT. THE APPLICANT, HOWEVER, DID NOT PROPOSE THE EXCLUSION OF PART-TIME GRADUATE NURSES FROM THE UNIT.

4. ACCORDING TO THE RECORDS ON FILE, THE RESPONDENT POSTED TWO COPIES OF THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) ON THE PREMISES OF THE RESPONDENT ON MAY 22, 1973.

(THE NOTICE WAS NOT POSTED ON OR ABOUT JULY 1, 1973 AS IS SUGGESTED IN THE LETTER OF JULY 31, 1973 REFERRED TO ABOVE.) THE SAID NOTICE WAS POSTED SEVEN DAYS PRIOR TO THE TERMINAL DATE OF MAY 29, 1973 FIXED BY THE BOARD FOR THE APPLICATION. BY THE NOTICE, THE EMPLOYEES IN THE UNIT PROPOSED BY THE APPLICANT WERE ADVISED OF THEIR RIGHT TO FILE WRITTEN REPRESENTATIONS IN OPPOSITION TO THE APPLICATION AND TO APPEAR AT THE BOARD HEARING SCHEDULED FOR JUNE 13, 1973 TO GIVE VIVA VOCE EVIDENCE IN SUPPORT OF THEIR OPPOSITION. NO EMPLOYEES IN THE PROPOSED UNIT, INCLUDING THE PART-TIME GRADUATE NURSES, FILED ANY STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION, NOR DID ANY OF THE PART-TIME GRADUATE NURSES APPEAR AT THE HEARING AND EXPRESS THEIR OPPOSITION TO THE INCLUSION OF THEIR CLASSIFICATION IN THE BARGAINING UNIT ALTHOUGH THEY WERE AFFORDED EVERY OPPORTUNITY TO DO SO.

5. AT THE HEARING OF THE APPLICATION ON JUNE 13, 1973, THE PARTIES AGREED THAT THE APPROPRIATE UNIT WOULD BE ONE COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT STRATHMERE LODGE AT STRATHROY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, ADJUVANT, CRAFT INSTRUCTOR, CHIEF CHEF, CHIEF ENGINEER, PURCHASING AGENT, STOCK-KEEPER AND OFFICE STAFF. THEREFORE, BY PARAGRAPH 3 OF ITS DECISION OF JUNE 13, 1973 THE BOARD FOUND THE ABOVE UNIT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. HAVING REGARD TO THE MEMBERSHIP POSITION OF THE APPLICANT, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE UNIT.

6. WE WOULD MENTION THAT AT THE BOARD HEARING NEITHER THE APPLICANT NOR THE RESPONDENT PROPOSED THE EXCLUSION OF PART-TIME GRADUATE NURSES AND, AS HAS BEEN STATED, NO EMPLOYEES IN THIS CLASSIFICATION EITHER IN WRITING OR BY ATTENDANCE AT THE HEARING EXPRESSED OPPOSITION TO THE INCLUSION OF PART-TIME GRADUATE NURSES IN THE UNIT. IN FACT, THE APPLICANT AND RESPONDENT AGREED THAT THE EXCLUSIONS FROM THE PART-TIME UNIT SHOULD BE THE SAME AS THOSE EXCLUDED BY THE BOARD'S CERTIFICATE DATED JUNE 19, 1968, ISSUED WITH RESPECT TO THE FULL-TIME EMPLOYEES OF THE RESPONDENT AT STRATHMERE LODGE. THAT SAME UNIT DESCRIPTION, WE WOULD ADD, IS CONTAINED IN THE RECOGNITION CLAUSE OF THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COVERING THE FULL-TIME EMPLOYEES. THE EXCLUSIONS FROM THE FULL-TIME AND PART-TIME UNITS, IN FACT, ARE IDENTICAL AND IN NEITHER CASE WERE GRADUATE NURSES, EITHER FULL-TIME OR PART-TIME, EXCLUDED FROM THE UNITS.

7. SUBSEQUENT TO THE ISSUANCE OF THE BOARD'S DECISION OF JUNE 13, 1973 DIRECTING THE TAKING OF A REPRESENTATION VOTE, UPON THE INSTRUCTIONS OF THE REGISTRAR, REPRESENTATIVES OF THE APPLICANT AND THE RESPONDENT MET AND MADE ARRANGEMENTS FOR THE TAKING OF THE VOTE, INCLUDING THE DRAWING UP OF THE VOTERS' LIST. THE LIST INCLUDED THE NAMES OF THE PART-TIME GRADUATE NURSES, SINCE THEY FELL WITHIN THE SCOPE OF THE BARGAINING UNIT. ALSO THE REGISTRAR, BY LETTER DATED JUNE 26, 1973, FORWARDED TO THE RESPONDENT FOUR NOTICES OF TAKING OF VOTE WHICH THE RESPONDENT WAS INSTRUCTED

TO POST IMMEDIATELY IN CONSPICUOUS LOCATIONS ON THE RESPONDENT'S PREMISES. IT IS APPARENT FROM THE LETTER OF JULY 31, 1973 THAT IT IS THIS NOTICE WHICH WAS POSTED ON OR ABOUT JULY 1, 1973, ALTHOUGH IN THE SAID LETTER THE NOTICE IS DESCRIBED AS THE NOTICE OF THE APPLICATION RATHER THAN THE VOTE. IN OTHER WORDS, THE PART-TIME GRADUATE NURSES HAD NOTICE OF THE VOTE APPROXIMATELY TEN DAYS PRIOR TO WHEN IT WAS HELD ON JULY 11, 1973.

8. THE PART-TIME GRADUATE NURSES IN THEIR LETTERS OF JULY 18 AND JULY 31, 1973 ALLEGED THAT THEY WERE NOT INFORMED OF THE VOTE AND DID NOT KNOW ITS PURPOSE. ALL RELEVANT AND NECESSARY INFORMATION CONCERNING THE VOTE, HOWEVER, INCLUDING A DESCRIPTION OF THOSE ELIGIBLE TO VOTE WAS SET OUT IN THE NOTICE OF THE VOTE POSTED ON OR ABOUT JULY 1, 1973. THE LETTER OF JULY 18, 1973 ALSO ALLEGES THAT THE VOTERS' LIST WAS NOT POSTED. IN THIS REGARD WE WOULD POINT OUT THAT NO PROVISION IS MADE IN THE LABOUR RELATIONS ACT OR THE BOARD'S RULES OF PROCEDURE FOR THE POSTING OF THE VOTERS' LIST AND IT IS NOT THE BOARD'S PRACTICE TO DO SO. THE ABOVE REFERRED TO LETTERS FROM THE PART-TIME GRADUATE NURSES ALSO SEEM TO SUGGEST THAT THERE WAS SOME OBLIGATION ON THE APPLICANT UNION TO ADVISE THEM AS TO THE RAMIFICATIONS OF THE VOTE. IN THIS CONNECTION WE WOULD SIMPLY SAY THAT THE BOARD IS NOT CONCERNED AS TO THE MANNER IN WHICH A TRADE UNION CONDUCTS EITHER AN ORGANIZING CAMPAIGN OR ELECTIONEERING WHEN A VOTE IS DIRECTED, PROVIDED THERE ARE NO ALLEGATION OF COERCION OR INTIMIDATION OR ANY OTHER UNFAIR LABOUR PRACTICE UNDER THE ACT. THERE ARE NO SUCH ALLEGATIONS IN THE INSTANT CASE. FURTHER, HAD THE PART-TIME GRADUATE NURSES TAKEN HEED OF THE NOTICE, THEY WOULD HAVE HAD AMPLE TIME TO CAMPAIGN AGAINST THE APPLICANT PRIOR TO THE COMMENCEMENT OF THE "NO PROPAGANDA" PERIOD PRIOR TO THE TAKING OF THE VOTE HAD THEY DESIRED TO DO SO.

9. ACCORDINGLY, IN OUR VIEW, SINCE IN THE PROCESSING OF THE APPLICATION AND IN THE ARRANGEMENTS FOR THE REPRESENTATION VOTE, THE BOARD, THE APPLICANT AND THE RESPONDENT ACTED IN COMPLIANCE WITH ALL OF THE PROCEDURES REQUIRED BY THE ACT AND RULES, THE RESPONSIBILITY FOR ANY LACK OF KNOWLEDGE ABOUT THE APPLICATION OR THE VOTE CLEARLY MUST BE ATTRIBUTED TO THE PART-TIME GRADUATE NURSES THEMSELVES. FOR, AS HAS BEEN STATED, ALL OF THE RELEVANT INFORMATION RELATING TO THE APPLICATION AND THE VOTE WAS AVAILABLE TO THEM.

10. IT APPEARS FROM THE LETTERS OF JULY 18 AND JULY 31, 1973 THAT THE PART-TIME GRADUATE NURSES HAVE NO OBJECTIONS TO THE CONDUCT OF THE VOTE ITSELF. IN THIS REGARD WE WOULD MENTION THAT THE SCRUTINEERS FOR BOTH PARTIES CERTIFIED THAT THE BALLOTING WAS FAIRLY CONDUCTED AND THAT ALL ELIGIBLE VOTERS WERE GIVEN AN OPPORTUNITY TO CAST THEIR BALLOTS. RATHER THEIR REAL OBJECTION IS TO THEIR INCLUSION IN THE BARGAINING UNIT. AS HAS BEEN MADE CLEAR EARLIER IN THIS DECISION, AT THE APPROPRIATE TIME BETWEEN THE POSTING OF THE APPLICATION ON MAY 22 AND THE TERMINAL DATE ON MAY 29, 1973 THEY COULD HAVE EXPRESSED THEIR OPPOSITION TO THE APPLICATION IN WRITING AND APPEARED AT THE HEARING ON JUNE 13, 1973 IN SUPPORT OF THEIR WRITTEN OBJECTIONS. INDEED, FOR THAT MATTER, FOR PURPOSES OF REQUESTING THE EXCLUSION OF THE CLASSIFICATION OF PART-TIME GRADUATE NURSES FROM THE

BARGAINING UNIT THEY COULD HAVE APPEARED AT THE HEARING AND MAKE REPRESENTATIONS TO THAT EFFECT WITHOUT PRIOR NOTICE. HOWEVER, DESPITE THE NOTICES OF THE APPLICATION WHICH WERE POSTED ON THE PREMISES OF THE RESPONDENT, NONE OF THE PART-TIME GRADUATE NURSES TOOK ADVANTAGE OF THESE OPPORTUNITIES.

11. IN ALL THE ABOVE CIRCUMSTANCES, AND HAVING CAREFULLY CONSIDERED THE REPRESENTATIONS SET OUT IN THE LETTERS OF JULY 18 AND 31, 1973, THE BOARD SEES NO REASON WHY IT SHOULD AT THIS LATE STAGE IN THE PROCEEDINGS GRANT A HEARING TO THE PART-TIME GRADUATE NURSES FOR THE PURPOSE OF ENTERTAINING REPRESENTATIONS WITH RESPECT TO THEIR APPROPRIATENESS FOR INCLUSION IN THE BARGAINING UNIT. WE ACCORDINGLY SEE NO VALID GROUNDS FOR NOT MAKING OUR DISPOSITION WITH RESPECT TO THE APPLICATION ON THE BASIS OF THE RESULTS OF THE REPRESENTATION VOTE. THE REQUEST OF THE PART-TIME GRADUATE NURSES THEREFORE IS DISMISSED.

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13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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4191-73-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SMITHS CONSTRUCTION COMPANY ARNPRIOR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: H. A. HERRON AND STAN DWYER FOR THE APPLICANT; A. P. TARASUK AND N. SMITH FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 8, 1973.

1. THIS IS AN APPLICATION FOR RIGHT OF ACCESS MADE PURSUANT TO THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE AGREED FACTS, THE BOARD FINDS THAT THE RESPONDENT IS THE EMPLOYER OF THIRTY-TWO EMPLOYEES, ALL BUT TWO OF WHOM RESIDE ON PROPERTY TO WHICH THE RESPONDENT HAS THE RIGHT TO CONTROL ACCESS. THE BOARD FURTHER FINDS THAT THE PROPERTY TO WHICH THE RESPONDENT HAS THE RIGHT TO CONTROL ACCESS IS COMPRISED OF A CAMPSITE LOCATED NEAR KLOTZ LAKE ON THE NORTH SIDE OF HIGHWAY NO. 11 APPROXIMATELY THIRTY MILES EAST OF LONG LAC.

3. PURSUANT TO THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT, THE BOARD ACCORDINGLY DIRECTS THE RESPONDENT TO ALLOW EITHER BERNARD McMILLAN OR STAN DWYER ACCESS TO THE CAMPSITE IN WHICH THE RESPONDENT'S EMPLOYEES RESIDE. HAVING REGARD TO THE HOURS WORKED BY THE RESPONDENT'S EMPLOYEES, THE BOARD DIRECTS THAT BERNARD McMILLAN OR STAN DWYER BE ALLOWED

ACCESS TO THE CAMPSITE BETWEEN THE HOURS OF 8:00 P.M. AND 9:30 P.M. ON THURSDAY, AUGUST 16 AND FRIDAY, AUGUST 17 AND BETWEEN THE HOURS OF 10:00 A.M. AND 12:00 NOON ON SATURDAY, AUGUST 18, 1973, FOR THE PURPOSE OF ATTEMPTING TO PERSUADE THE RESPONDENT'S EMPLOYEES TO JOIN THE APPLICANT TRADE UNION.

3743-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. CORDS CANADA, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. RUSSELL AND FRANK PISERCHIA FOR THE COMPLAINANT; S. C. BERNARDO AND GRAHAM INGRAM FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 9, 1973.

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2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGED THAT SCOLASTICA PASSANTE WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE LABOUR RELATIONS ACT. HAVING CONSIDERED ALL THE EVIDENCE IN THIS MATTER, WE FIND THAT THE EVIDENCE OF THE FLOORLADY EDDA TURCHI IS IN CONFLICT WITH THE EVIDENCE OF TWO OTHER EMPLOYEES WITH RESPECT TO INQUIRIES SHE MADE CONCERNING THEIR INVOLVEMENT WITH THE UNION. HAVING CONSIDERED THE DEMEANOUR OF THE WITNESSES IN THE WITNESS BOX AND THE MANNER IN WHICH THEY TESTIFIED, WE FIND THAT THE EVIDENCE OF THE TWO EMPLOYEES IS MORE CREDIBLE THAN THE EVIDENCE OF MRS. TURCHI IN THIS REGARD. IN ADDITION, WE FIND THAT THE TESTIMONY OF THE PLANT MANAGER IS IN CONFLICT WITH THE TESTIMONY OF OTHER WITNESSES CONCERNING THE DECISION TO DISCHARGE MRS. PASSANTE.

3. IN VIEW OF THESE CIRCUMSTANCES, WE FIND THAT EVEN THOUGH MRS. PASSANTE'S EMOTIONAL OUTBURST ON MAY 2 WHICH PRECEDED HER DISCHARGE WAS NOT JUSTIFIED BY WHAT MRS. TURCHI SAID TO HER (UNLESS WE ACCEPT COUNSEL FOR THE COMPLAINANT'S EXPLANATION THAT THE REASON FOR THE OUTBURST IS BASED ON A COMBINATION OF THE LATIN AND FEMALE TEMPERAMENT), HER OUTBURST, WHILE PERHAPS CAUSE FOR SOME DISCIPLINARY ACTION, WAS NOT THE REAL REASON FOR HER DISCHARGE. MRS. PASSANTE WAS KNOWN TO BE THE LEADING UNION SUPPORTER AMONG THE EMPLOYEES. SHE WAS ALSO ACKNOWLEDGED TO BE AN EXCELLENT WORKER. HER OUTBURST ON MAY 2 WAS OBVIOUSLY RECOGNIZABLE AS EMOTIONAL RATHER THAN A CHALLENGE TO THE AUTHORITY OF HER SUPERVISORS. THIS WAS READILY APPARENT FROM THE FACT THAT NO SUPERVISOR WAS IN THE VICINITY WHEN MRS. PASSANTE ATTRACTED THE ATTENTION OF HER SUPERVISORS, ALTHOUGH MRS. PASSANTE WAIVED HER ARMS ABOUT IN HER EXCITEMENT WHEN MRS. TURCHI ATTEMPTED TO CALM HER, WE FIND THAT SHE DID NOT INTEND TO STRIKE MRS. TURCHI AND MADE NO EFFORT TO DO SO.

4. IN VIEW OF THE FACT THAT WE FIND THAT MRS. TURCHI'S EVIDENCE IS UNRELIABLE AND HAVING REGARD FOR THE CONFLICT IN THE TESTIMONY OF OTHER COMPANY WITNESSES CONCERNING THE REASONS FOR THE DISCHARGE, WE ARE OF THE VIEW THAT THE EVIDENCE OF MRS. PASSANTE AND THE OTHER UNION WITNESSES SHOULD BE ACCEPTED.

5. WE THEREFORE FIND THAT THE COMPANY DISCHARGED MRS. PASSANTE BECAUSE OF HER UNION ACTIVITY CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT.

6. WE ACCORDINGLY DIRECT THE COMPANY TO REINSTATE SCOLASTICA PASSANTE IN THE POSITION HELD BY HER AT THE TIME OF HER DISCHARGE WITHOUT LOSS OF SENIORITY.

7. IN VIEW OF THE EVIDENCE THAT MRS. PASSANTE MADE NO REAL EFFORT TO OBTAIN ALTERNATE EMPLOYMENT OR OTHERWISE MITIGATE HER LOSS, WE MAKE NO ORDER FOR COMPENSATION FOR LOSS OF WAGES.

4003-73-R: GENERAL TRUCK DRIVERS LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DIRECT WINTERS TRANSPORT LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON AND V. NEAL FOR THE APPLICANT; R. C. FILION, H. S. PALMER, G. BELANGER AND D. FAIRLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 9, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION OF THE APPLICANT AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. THE RESPONDENT'S UNDERTAKING OR BUSINESS INCLUDES THE TRANSPORTATION OF GOODS ON INTERPROVINCIAL AND INTERNATIONAL TRUCKING ROUTES. IT IS COMMON GROUND THAT THESE OPERATIONS ARE GOVERNED BY AND FALL WITHIN THE JURISDICTION OF THE CANADA LABOUR CODE AND THE CANADA LABOUR RELATIONS BOARD.

3. THE RESPONDENT SUBMITS THAT SINCE THE OFFICE AND CLERICAL EMPLOYEES ARE DIRECTLY ENGAGED IN SUPPORT OF THE INTERPROVINCIAL AND INTERNATIONAL TRUCKING OPERATION, THEIR WORK ALSO FALLS WITHIN THE JURISDICTION OF THE FEDERAL LEGISLATION.

4. A PROBLEM, SIMILAR TO THAT RAISED IN THE PRESENT CASE, WAS DEALT WITH BY THE SUPREME COURT OF CANADA IN REFERENCE RE VALIDITY OF INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (CAN.) AND APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF EASTERN CANADA STEVEDORING CO. LTD. [1955] 3 D.L.R. P. 721. THE HEADNOTE TO THAT CASE STATES, IN PART, AS FOLLOWS:

"A STEVEDORING COMPANY WHICH WAS IN THE BUSINESS OF SUPPLYING STEVEDORING AND TERMINAL SERVICES TO SHIPPING COMPANIES ENTERED INTO CONTRACTS WITH SEVEN SHIPPING COMPANIES FOR THE LOADING AND UNLOADING OF SHIPS OF THOSE COMPANIES OPERATING ON REGULAR SCHEDULES BETWEEN PORTS IN CANADA AND PORTS OUTSIDE OF CANADA. ONE OF THE PORTS WHERE THE STEVEDORING COMPANY SUPPLIED ITS SERVICES WAS TORONTO, AND THERE IT EMPLOYED AN OFFICE STAFF AND STEVEDORES WHO WERE ENGAGED EXCLUSIVELY IN RENDERING SERVICES UNDER THE CONTRACTS AFORESAID. HELD, BY THE SUPREME COURT ON A REFERENCE, RAND AND LOCKE JJ. DISSENTING IN PART, THE OFFICE STAFF AND THE STEVEDORES (IN SO FAR AS THEY WERE EMPLOYEES WITHIN S. 2(1)(J) OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT) WERE SUBJECT TO THE ACT (AND NOT TO THE ONTARIO LABOUR RELATIONS ACT) IN THEIR EMPLOYMENT RELATIONS WITH THE STEVEDORING COMPANY. IT WAS IMMATERIAL THAT THEIR EMPLOYER WAS A CONCERN INDEPENDENT OF THE SHIPPING COMPANIES WITH WHICH IT CONTRACTED."

5. RAND J. FOUND THAT THE WHOLE MATTER FELL WITHIN THE PROVINCIAL JURISDICTION. OF PARTICULAR SIGNIFICANCE TO THE MATTER UNDER REVIEW HERE, HOWEVER, IS THE STATEMENT MADE IN THE COURSE OF HIS JUDGEMENT THAT, FROM THE STAND POINT OF PRACTICABILITY, THE ENTIRE ORGANIZATION MUST BE TAKEN TO BE UNDER A SINGLE LEGISLATIVE CONTROL, INCLUDING SUCH AUXILIARY STAFF AS OFFICE WORKERS. ON THE OTHER HAND, LOCKE J. FOUND THAT THE OFFICE STAFF OUGHT NOT TO BE INCLUDED WITH THE STEVEDORING EMPLOYEES AS PERSONS ENGAGED UNDER THE FEDERAL LEGISLATION.

6. THE BOARD, IN LIGHT OF THE DECISION OF THE SUPREME COURT IN THE STEVEDORING CASE ABOVE AND KEEPING IN MIND THE ABOVE NOTED STATEMENT OF RAND J. WITH RESPECT TO THE PRACTICABILITY OF THE MATTER, FINDS THAT THE EMPLOYEES IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT FALL TO BE DEALT WITH UNDER THE FEDERAL LEGISLATION. THIS BOARD, ACCORDINGLY, HAS NO JURISDICTION TO DEAL WITH THE APPLICATION.

7. IN ARRIVING AT THE FOREGOING FINDING, THE BOARD IS AWARE OF THE FACT THAT THE APPLICANT WAS CERTIFIED BY THIS BOARD AS BARGAINING AGENT FOR OFFICE EMPLOYEES OF THE RESPONDENT AT OTHER LOCALITIES. THE MATTER OF JURISDICTION, HOWEVER, DOES NOT APPEAR TO HAVE BEEN RAISED HERETOFORE.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

2221-72-R: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (RESPONDENT) V. CESARONI BROTHERS (INTERVENER #1) V. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562 (INTERVENER #2) V. GAMBIN BROTHERS LIMITED (INTERVENER #3).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: D. A. PEPIATT AND W. JOHNSTON APPEARING FOR THE APPLICANT; R. D. PERKINS APPEARING FOR THE RESPONDENT; INTERVENER #1, INTERVENER #3 AND DONALDSON-BARRON LIMITED; AND RAYMOND KOSKIE AND A. M. MINSKY APPEARING FOR INTERVENER #2.

DECISION OF THE BOARD: August 10, 1973.

1. THE APPLICANT APPLIED TO THE BOARD UNDER SECTION 55 OF THE LABOUR RELATIONS ACT WITH RESPECT TO THE BARGAINING RIGHTS OF THE APPLICANT AS A RESULT OF AN ALLEGED SALE OF A BUSINESS ON OR ABOUT JANUARY 1, 1971, BY CESARONI BROTHERS, DONALDSON - BARRON LIMITED AND GAMBIN BROTHERS LIMITED TO THE RESPONDENT.

2. THE APPLICANT SEEKS A DECLARATION THAT THE APPLICANT IS THE SOLE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT AND THAT THE RESPONDENT IS BOUND BY THE COLLECTIVE AGREEMENTS WHICH THE APPLICANT CLAIMED IT HAD WITH CESARONI BROTHERS, DONALDSON - BARRON LIMITED AND GAMBIN BROTHERS LIMITED.

3. AT THE HEARING THE APPLICANT STATED THAT IT WAS RELYING ON SECTION 55(2) OF THE LABOUR RELATIONS ACT, R.S.O. 1970 c. 232.

4. INTERVENER #2 RAISED SEVERAL OBJECTIONS CONCERNING WHETHER THE APPLICANT WAS AT THE MATERIAL TIMES A PARTY TO ANY COLLECTIVE AGREEMENT(S) WITH EITHER INTERVENER #1, INTERVENER #3 OR DONALDSON - BARRON LIMITED. IN THE LIGHT OF THE REASONS OF THE BOARD SET FORTH HEREIN, IT IS UNNECESSARY FOR THE BOARD TO DECIDE THE QUESTION OF THE BARGAINING RIGHTS WHICH THE APPLICANT ALLEGES IT HAS OR HAD WITH RESPECT TO EITHER THE INTERVENER #1, INTERVENER #3 OR DONALD - BARRON LIMITED.

5. EVEN ASSUMING, WITHOUT DECIDING, THAT THE APPLICANT HAS THE BARGAINING RIGHTS WHICH IT CLAIMS, AND, EVEN ASSUMING, WITHOUT DECIDING, THAT A SALE OF A BUSINESS OR BUSINESSSES OCCURRED ON JANUARY 1, 1971, THE RELIEF WHICH THE APPLICANT CLAIMS IS NOT AVAILABLE HAVING REGARD TO THE TIME WHEN THE ALLEGED SALE OCCURRED.

6. SECTION 55(2) OF THE LABOUR RELATIONS ACT, R.S.O. 1970, c. 232, CAME INTO FORCE ON FEBRUARY 15, 1971. BY VIRTUE OF SECTION 22(2) OF THE LABOUR RELATIONS ACT, SECTION 55 OF THE LABOUR RELATIONS ACT DOES NOT APPLY IN RESPECT OF THE SALE OF A BUSINESS BEFORE THE DAY ON WHICH SECTION 55 CAME INTO FORCE.

7. ACCORDINGLY, SECTION 47A(2) APPLIES TO THE FACTS ALLEGED IN THIS APPLICATION. THE SPECIFIC RELIEF WHICH THE APPLICANT SEEKS WAS NOT AVAILABLE UNDER THE PROVISIONS OF SECTION 47A(2) OF THE LABOUR RELATIONS ACT.

8. ACCORDINGLY, THIS PROCEEDING IS TERMINATED.

1322-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1747, 1963, 3227, 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER).

[RE: CLOVERLAWN INVESTMENTS LIMITED]

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.J.F. ADE.

APPEARANCES AT THE HEARING: B.W. BINNING AND G.A. BECIGNEUL FOR THE APPLICANT; WM. MORRIS AND T. ARMSTRONG FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER; NO ONE APPEARING FOR CLOVERLAWN INVESTMENTS LIMITED.

DECISION OF THE BOARD: August 14, 1973.

1. THE RESPONDENT HAS BY LETTER DATED APRIL 26, 1973, REQUESTED THE BOARD TO DETERMINE WHETHER CLOVERLAWN INVESTMENTS LIMITED (HEREINAFTER REFERRED TO AS "CLOVERLAWN") IS AN EMPLOYER IN THE UNIT OF EMPLOYERS FOR WHICH THE APPLICANT HAS BEEN ACCREDITED. A SEARCH OF THE BOARD'S RECORDS INDICATES THAT ON FEBRUARY 14, 1973, IN BOARD FILE NO. 3202-72-R THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS "THE UNITED BROTHERHOOD") WAS CERTIFIED FOR THE FOLLOWING BARGAINING UNIT OF EMPLOYEES OF CLOVERLAWN:

"ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

THE QUESTION THUS ARISES WHETHER CLOVERLAWN IS INCLUDED IN THE UNIT OF EMPLOYERS AS A RESULT OF THE OPERATION OF SUBSECTION 2 OF SECTION 115 OF THE ACT AND THAT PART OF THE CERTIFICATION OF ACCREDITATION DATED APRIL 18, 1973 WHICH READS IN PART:

"AND SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1747, 1963, 3227, 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MAY AFTER NOVEMBER 30TH, 1971 OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR AS SET OUT IN THE UNIT OF EMPLOYERS DESCRIBED HEREIN."

THE APPLICANT AGREED THAT THE BOARD SHOULD CONSIDER THIS REQUEST BY THE RESPONDENT AND THE MATTER WAS LISTED FOR HEARING ON JUNE 30, 1973. ALTHOUGH CLOVERLAWN AND THE SOLICITOR OF RECORD FOR CLOVERLAWN IN BOARD FILE NO. 3202-72-R WERE SERVED WITH NOTICE OF THIS HEARING IN FORM 66, NO ONE APPEARED FOR CLOVERLAWN AT THE HEARING.

2. ALTHOUGH THE BOARD ON APRIL 18, 1973, ISSUED ITS DECISION ACCREDITING THE APPLICANT AS BARGAINING AGENT FOR A UNIT OF EMPLOYERS WHO HAVE A BARGAINING RELATIONSHIP WITH THE RESPONDENT, IT IS CLEAR THAT THE BOARD HAS THE JURISDICTION TO ENTERTAIN THE PRESENT REQUEST BY THE RESPONDENT AS A RESULT OF THE POWERS GIVEN THE BOARD IN SUBSECTION 1 OF SECTION 95 OF THE ACT. THE GIST OF THE REQUEST BY THE RESPONDENT IS THAT THE BOARD VARY ITS DECISION OF APRIL 18, 1973, TO INCLUDE CLOVERLAWN AS ONE OF THE NAMED EMPLOYERS LISTED IN THAT DECISION AS EMPLOYERS IN THE UNIT OF EMPLOYERS. THE POWER TO VARY DECISIONS IS SPECIFICALLY GIVEN TO THE BOARD IN SECTION 95(1).

3. COUNSEL FOR THE RESPONDENT CONCEDED AT THE HEARING THAT THE RESPONDENT IN THIS CASE IS THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1747, 1963, 3227, 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS "THE DISTRICT COUNCIL"), AND FURTHER THAT THE APPLICANT THAT WAS CERTIFIED IN BOARD FILE NO. 3202-72-R WAS THE UNITED BROTHERHOOD. THE APPLICATION FOR CERTIFICATION WAS GRANTED ON THE BASIS OF EVIDENCE OF MEMBERSHIP IN THE VARIOUS LOCALS OF THE UNITED BROTHERHOOD. IT WOULD APPEAR THAT IN THAT CERTIFICATION CASE THE BOARD APPLIED ITS USUAL RULE THAT SUCH MEMBERSHIP IN A LOCAL TRADE UNION IS ACCEPTABLE EVIDENCE OF MEMBERSHIP IN THE PARENT TRADE UNION. COUNSEL ALSO POINTED OUT THAT ALTHOUGH THE UNITED BROTHERHOOD IS CERTIFIED AND IT APPEARS HAS APPLIED FOR CONCILIATION, THE USUAL PRACTICE THAT WOULD BE FOLLOWED WITH RESPECT TO CLOVERLAWN WOULD BE THAT ANY COLLECTIVE AGREEMENT RESULTING FROM THE COLLECTIVE BARGAINING BETWEEN THE UNITED BROTHERHOOD AND CLOVERLAWN WOULD BE SIGNED ON BEHALF OF THE UNITED BROTHERHOOD BY THE DISTRICT COUNCIL. THE REASON SUGGESTED FOR THIS PRACTICE IS THAT THE CONSTITUTION AND BY-LAWS OF THE UNITED BROTHERHOOD GIVES THE DISTRICT COUNCIL THE EXCLUSIVE JURISDICTION TO MAKE ANY SUCH COLLECTIVE AGREEMENT.

4. A QUESTION THUS ARISES WHETHER THE CONSTITUTION AND BY-LAWS OF THE UNITED BROTHERHOOD EFFECT A TRANSFER OF JURISDICTION FROM THE UNITED BROTHERHOOD TO THE DISTRICT COUNCIL. FURTHER, IF IT IS A TRANSFER OF JURISDICTION WHETHER THE BOARD COULD OR SHOULD MAKE A DECLARATION UNDER SECTION 54 OF THE ACT IN THE PRESENT CASE. COUNSEL FOR BOTH THE APPLICANT AND THE RESPONDENT SUGGEST THAT SUCH A DECLARATION COULD BE SO MADE. THE EFFECT OF SUCH A DECLARATION WOULD BE THE FINDING THAT THE DISTRICT COUNCIL BY VIRTUE OF THE TRANSFER OF JURISDICTION FROM THE UNITED BROTHERHOOD WOULD BE THE BARGAINING AGENT FOR THE EMPLOYEES OF CLOVERLAWN PURSUANT TO THE CERTIFICATION OF THE UNITED BROTHERHOOD. IT WAS, HOWEVER, CONCEDED BY COUNSEL FOR BOTH PARTIES THAT PRIOR TO THE MAKING OF SUCH A DECLARATION THE BOARD OUGHT PROPERLY TO NOTIFY CLOVERLAWN THAT SUCH A DECLARATION WAS AT ISSUE IN THE PRESENT REQUEST TO VARY THE BOARD'S PREVIOUS DECISION IN THIS CASE. AT THE CONCLUSION OF THE HEARING THE BOARD RESERVED ITS DECISION OF WHETHER THIS MATTER WOULD BE SET DOWN FOR A FURTHER HEARING.

5. AFTER CAREFUL CONSIDERATION OF THE REQUEST TO APPLY SECTION 54 IN THE PRESENT CASE WE ARE OF THE OPINION THAT SECTION 54 WILL NOT PROVIDE THE RELIEF WHICH BOTH THE RESPONDENT AND THE APPLICANT ARE SEEKING. SUBSECTION 1 OF SECTION 54 READS AS FOLLOWS:

54.-(1) WHERE A TRADE UNION CLAIMS THAT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION IT IS THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER AND ANY QUESTION ARISES IN RESPECT OF ITS RIGHTS TO ACT AS THE SUCCESSOR, THE BOARD, IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED, MAY DECLARE THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR, OR THE BOARD MAY DISMISS THE APPLICATION.

IT IS CLEAR FROM THE DEFINITION OF "TRADE UNION" IN SECTION 1(1)(N) -

1.-(1)(N) "TRADE UNION" MEANS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND INCLUDES A PROVINCIAL, NATIONAL OR INTERNATIONAL TRADE UNION AND A CERTIFIED COUNCIL OF TRADE UNIONS;

AND COUNCIL OF TRADE UNIONS IN SECTION 1(1)(G) -

- 1.-(1)(g) "COUNCIL OF TRADE UNIONS" INCLUDES
AN ALLIED COUNCIL, A TRADES COUNCIL, A
JOINT BOARD AND ANY OTHER ASSOCIATION OF
TRADE UNIONS;

THAT THERE IS A DISTINCTION BETWEEN A TRADE UNION AND A COUNCIL OF TRADE UNIONS AND THAT THE TERM TRADE UNION DOES NOT INCLUDE THE TERM COUNCIL OF TRADE UNIONS. SECTION 54(1) SPEAKS ONLY OF A CLAIM BY A TRADE UNION AND NOT OF A CLAIM BY A COUNCIL OF TRADE UNIONS. THUS, THE BOARD HAS NO JURISDICTION UNDER SECTION 54 OF THE ACT TO MAKE A DECLARATION THAT A COUNCIL OF TRADE UNIONS IS THE SUCCESSOR BARGAINING AGENT TO A TRADE UNION NOTWITHSTANDING THAT THERE MAY BE A TRANSFER OF JURISDICTION FROM A TRADE UNION TO A COUNCIL OF TRADE UNIONS. IN VIEW OF THE FOREGOING IT WILL NOT BE NECESSARY FOR THE BOARD TO HOLD AN ADDITIONAL HEARING WITH RESPECT TO THE APPLICATION OF SECTION 54 SINCE WE ARE SATISFIED THAT SECTION 54 SIMPLY DOES NOT APPLY IN THE PRESENT CASE.

6. ALTHOUGH WE ARE PREPARED TO ACCEPT THE REPRESENTATIONS OF BOTH THE RESPONDENT AND THE APPLICANT AS TO THE NORMAL PRACTICE USED BY THE RESPONDENT AND THE UNITED BROTHERHOOD WITH RESPECT TO THE COLLECTIVE AGREEMENTS IN THE TORONTO AREA, WE CANNOT SEE HOW THIS ENABLES THE BOARD TO GRANT THE REMEDY REQUESTED BY THE RESPONDENT IN THIS MATTER. CLEARLY THE APPLICANT WAS ACCREDITED FOR EMPLOYERS WHO BARGAIN WITH THE DISTRICT COUNCIL. ON THE OTHER HAND CLOVERLAWN WAS CERTIFIED BY THE UNITED BROTHERHOOD. THE DISTRICT COUNCIL DOES NOT HAVE THE BARGAINING RIGHTS FOR CLOVERLAWN AND THEREFORE CLOVERLAWN IS NOT AN EMPLOYER IN THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT IN THE BOARD'S DECISION OF APRIL 18, 1973.

7. ACCORDINGLY THE REQUEST BY THE RESPONDENT IS DENIED.

4046-73-R: CANADIAN UNION OF INDUSTRIAL EMPLOYEES (APPLICANT) V. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B. CHERCOVER AND N. RUDISI FOR THE APPLICANT; JAMES B. NOONAN, LOUISE BINDER, KARL GROSS AND J. KING FOR THE RESPONDENT; JEFF SACK, J. C. HORAN AND WM. J. POINTON FOR THE INTERVENER.

DECISION OF THE BOARD: AUGUST 15, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT IS REQUIRED TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. NOTWITHSTANDING THE FACT THAT SOME INCONSISTENT STATEMENTS WERE

MADE IN THE EVIDENCE OF TWO PROTAGONISTS OF THE APPLICANT, THE BOARD FINDS ON THE BASIS OF THE TOTALITY OF THE EVIDENCE, INCLUDING THE MINUTES OF THE MEETING, THAT AT A MEETING HELD BY EMPLOYEES OF THE RESPONDENT ON MAY 16TH, THEY ADOPTED A CONSTITUTION FOR AN ORGANIZATION TO BE KNOWN AS CANADIAN UNION OF INDUSTRIAL EMPLOYEES, SIGNED MEMBERSHIP CARDS AND PAID INITIATION FEES AND RATIFIED THE CONSTITUTION.

3. THE CONSTITUTION PROVIDES FOR THE ELECTION OF AN EXECUTIVE COMMITTEE COMPOSED OF A PRESIDENT, A VICE PRESIDENT, A SECRETARY TREASURER AND THREE MEMBERS AT LARGE. THE EXECUTIVE COMMITTEE IS EMPOWERED, GENERALLY SPEAKING, TO CARRY OUT THE BUSINESS OF THE ORGANIZATION. THE MEMBERSHIP APPOINTED A TEMPORARY COMMITTEE TO ACT PENDING ELECTION OF A PERMANENT COMMITTEE. QUESTIONS WERE RAISED AT THE HEARING WITH RESPECT TO THE CONSTITUTIONAL CORRECTNESS OF THIS MOVE.

4. THE BOARD IS PRIMARILY CONCERNED WITH THE CONSTITUTION AS A SOURCE OF EVIDENCE OF THE EXISTENCE OF A VIABLE ORGANIZATION AND OF EVIDENCE OF THE PURPOSE AND INTENT OF THE ORGANIZATION CONCERNED SO THAT THE BOARD MAY BE ABLE TO ANSWER THE QUESTION "IS THE APPLICANT A TRADE UNION AS DEFINED BY THE ACT?" (RE C.A.S.O. NATIONAL (INC) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION, 1972 O.R. Vol. 2, 498)". INQUIRIES MADE AS TO THE ELECTION OF OFFICERS ARE MADE WITH A VIEW ONLY TO AIDING IN THE DECISION AS TO WHETHER THE ORGANIZATION IS VIABLE. IN THE PRESENT CASE, THERE IS AN ARGUABLE POINT AS TO WHETHER THE APPOINTMENT OF THE TEMPORARY COMMITTEE LIES WITHIN THE CONSTITUTIONAL POWERS OF WHAT MUST BE SAID TO BE A GENERAL MEETING OF THE MEMBERSHIP. IT IS QUITE CLEAR, HOWEVER, THAT THE TEMPORARY COMMITTEE IS ACTIVELY ENGAGED IN THE ACTIVITIES OF THE ORGANIZATION CARRIED ON TO DATE. THE MATTER OF THE CONSTITUTIONALITY OF ITS APPOINTMENT AND ACTIONS IS ONE OF INTERNAL ORGANIZATION OF CONCERN TO THE MEMBERSHIP, NONE OF WHOM, INsofar AS THE BOARD WAS ADVISED, HAVE CHALLENGED THE PROPRIETY OF THE ACTION.

5. THE BOARD THEREFORE FINDS, UPON ALL OF THE EVIDENCE, THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF THE ACT.

6. THE REGISTRAR IS DIRECTED TO LIST THE APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSE OF HEARING EVIDENCE AND ARGUMENT UPON ALL ISSUES RAISED BY THE PARTIES WHICH REMAIN OUTSTANDING.

3910-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)
V. THOMAS CONSTRUCTION (GALT) LIMITED (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: A.M. MINSKY AND L. SCHERTZBERG FOR THE APPLICANT; B.W. BINNING FOR THE RESPONDENT.

DECISION OF THE BOARD:

August 17, 1973.

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3. AN EXAMINER APPOINTED BY THE BOARD IN ITS DECISION OF JUNE 14, 1973, ISSUED HIS REPORT ON JULY 3, 1973. THE PARTIES REQUESTED A HEARING TO ENABLE THEM TO MAKE REPRESENTATIONS ON THE REPORT OF THE EXAMINER. AT THE HEARING IN THIS REGARD THE RESPONDENT MADE A PRELIMINARY REQUEST THAT THE BOARD SHOULD RESUBMIT THE MATTER TO THE EXAMINER FOR FURTHER INFORMATION. THE PARTIES PRESENTED THEIR CASE TO THE BOARD'S EXAMINER AND HOWEVER ADEQUATE OR INADEQUATE THE CASE THAT WAS PRESENTED, THE RESPONDENT CANNOT AT THIS TIME REQUEST THE OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE TO THE BOARD WHICH WAS APPARENTLY AVAILABLE AT THE TIME THAT THE EXAMINER CONVENED HIS MEETING. ACCORDINGLY THE REQUEST BY THE RESPONDENT IS DENIED.

4. THE APPLICANT IN THIS CASE IS REQUESTING A BARGAINING UNIT OF CONSTRUCTION LABOURERS. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF SEVEN PERSONS CLAIMED TO BE IN THE BARGAINING UNIT. THE EXAMINER'S REPORT INDICATES THAT ON THE DATE OF THE MAKING OF THIS APPLICATION TWO OF THESE EMPLOYERS, MR. W.A. MEYER, JR., AND MR. C. ZONDAG WERE OPERATING A COMBINATION BACK HOE - FRONT END LOADER MACHINE. THE BOARD HAS ON A NUMBER OF OCCASIONS IN THE FORM OF CLARITY NOTES INDICATED THAT BACK HOE - FRONT END LOADERS ARE "SIMILAR EQUIPMENT" AS USED IN THE BARGAINING UNIT THAT THE BOARD NORMALLY FINDS APPROPRIATE FOR OPERATING ENGINEERS, NAMELY, ALL EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT. (SEE FLOYD DUNFORD LTD., OLRB MTHLY. REP. APRIL (1964) P. 13) THUS, THE EMPLOYEES OPERATING SUCH EQUIPMENT ARE CLASSIFIED AS EQUIPMENT OPERATORS AND NOT AS CONSTRUCTION LABOURERS. THUS, THE TWO EMPLOYEES OPERATING THE COMBINATION BACK HOE - FRONT END LOADER ARE NOT INCLUDED IN THE BARGAINING UNIT AND THE LIST OF EMPLOYEES IN THE BARGAINING UNIT IS ACCORDINGLY FIVE EMPLOYEES.

5. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3702-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. GIGNAC, SUTTS, NOSANCHUK (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W. PEEL AND JOAN SULLIVAN APPEARING FOR THE APPLICANT; C. G. RIGGS, A. GIGNAC, C. N. SUTTS AND S. NOSANCHUK APPEARING FOR THE RESPONDENT; AND J. N. BARTLET, Q.C., EMMA BERNHARDT AND V. LESPERANCE APPEARING FOR THE OBJECTORS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER J. D. BELL: AUGUST 17, 1973.

1. THE NAME "GIGNAC & SUTTS" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "GIGNAC, SUTTS, NOSANCHUK".

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO ESTABLISH CHARGES AGAINST THE CONDUCT OF THE RESPONDENT, PROOF OF WHICH, THE APPLICANT ALLEGES, WOULD ENTITLE THE APPLICANT TO OUTRIGHT CERTIFICATION UNDER SECTION 7(4) OF THE LABOUR RELATIONS ACT SHOULD IT NOT OTHERWISE BE ENTITLED TO CERTIFICATION ON THE BASIS OF ITS MEMBERSHIP EVIDENCE.

3. THE RESPONDENT REQUESTED THE BOARD TO DISMISS THE CHARGES BECAUSE OF THE APPLICANT'S DELAY IN FILING THEM.

4. THE BOARD RESERVED ITS DECISION ON THE RESPONDENT'S MOTION.

5. THE CHARGES ARE CONTAINED IN A LETTER TO THE BOARD DATED MAY 28TH, 1973, AND WERE NOT RECEIVED BY THE RESPONDENT UNTIL MAY 30TH, 1973, THE DAY BEFORE THE HEARING. THE CHARGES REFER TO EVENTS ALLEGED TO HAVE OCCURRED AS EARLY AS APRIL 24TH, 1973, WITH THE LATEST DATE REFERRED TO BEING MAY 2ND, 1973. THE EVIDENCE WAS THAT THE EVENTS WHICH THE APPLICANT SET OUT IN ITS CHARGES WERE KNOWN IMMEDIATELY THEY OCCURRED BY THE PERSONS WHOM THE APPLICANT WAS ATTEMPTING TO ORGANIZE.

6. THE APPLICANT ATTRIBUTED PART OF THE DELAY TO HIS ALLEGED APPREHENSION CONCERNING THE FILING OF CHARGES WHICH MIGHT BE DEEMED TO BE LIBELLOUS AGAINST LAWYERS. HE STATED THAT HE WANTED TO BE SURE OF HIS FACTS IN SUCH CIRCUMSTANCES. NOTWITHSTANDING THIS APPREHENSION, THE APPLICANT ISSUED A RELEASE TO THE PRESS ABOUT 4 DAYS BEFORE THE DATE OF THE FILING OF THE CHARGE IN WHICH WERE EMBODIED ALLEGATIONS SIMILAR TO THOSE CONTAINED IN THE CHARGES. IN LIGHT OF THIS TACTIC THE REASONS ADVANCED FOR DELAY ARE NOT PERSUASIVE.

7. WITH ALL OF THE FOREGOING IN MIND, AND HAVING REGARD TO THE REASONS SET OUT IN THE BURLINGTON HOTEL COMPANY LIMITED CASE, OLRB, M.R., NOVEMBER 1969, P. 976, WITH RESPECT TO THE LATE FILING OF CHARGES, THE BOARD WILL NOT ENTERTAIN THE CHARGES FILED BY THE APPLICANT AGAINST THE RESPONDENT AND THEY ARE ACCORDINGLY DISMISSED.

8. MR. D. K. AYSLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT, AND WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE DUTIES AND RESPONSIBILITIES OF PERSONS DESIGNATED AS:

(A) TITLE SEARCHER

(B) BOOKKEEPER.

DECISION OF BOARD MEMBER O. HODGES: August 17, 1973.

I DISSENT.

1. THE CHARGES MADE BY THE APPLICANT AGAINST THE RESPONDENT ALLEGE VERY SERIOUS VIOLATIONS OF THE ACT CONCERNING INTERFERENCE IN THE SELECTION OF A TRADE UNION BY WAY OF UNDUE INFLUENCE AND PROMISES, SAID TO BE MADE BY THE RESPONDENT TO ENCOURAGE EMPLOYEES TO OPPOSE THE APPLICANT UNION.

2. I AM SATISFIED THAT THE APPLICANT, IN THE CIRCUMSTANCES OF THIS CASE, ACTED RESPONSIBLY AND AS EXPEDITIOUSLY AS POSSIBLE IN THE FILING OF THESE ALLEGATIONS. I WOULD ALLOW THE CHARGES TO BE HEARD.

3050-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. BEECHWOOD STEEL SUPPLY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. M. MINSKY AND A. ROY APPEARING FOR THE APPLICANT; R. C. FILION AND M. SASLOVE APPEARING FOR THE RESPONDENT; AND NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER F. W. MURRAY: August 17, 1973.

...

5. THE APPLICANT SUBMITTED THAT THE BOARD DEAL WITH THE APPLICATION UNDER THE PROVISIONS OF SECTION 7(4) OF THE ACT. THE APPLICANT ALLEGED THAT THE CONDUCT OF MARTIN SASLOVE, A MANAGER OR FOREMAN OF THE RESPONDENT, WITH RESPECT TO TWO EMPLOYEES, JOHN KOSKO AND COSTINE JOHN, WAS SUCH THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE. IN THE CIRCUMSTANCES, THE APPLICANT URGED, THE BOARD SHOULD CERTIFY THE APPLICANT AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE, NOTWITHSTANDING THE FACT THAT THE MEMBERSHIP EVIDENCE WAS INSUFFICIENT FOR OUTRIGHT CERTIFICATION.

6. JOHN KOSKO TESTIFIED THAT HE HAD HAD A CONVERSATION WITH SASLOVE, THE MANAGER, SOME TIME IN JANUARY, 1972, DURING WHICH SASLOVE SHOWED HIM A PETITION AGAINST THE APPLICANT AND THAT HE HAD SIGNED IT. KOSKO SAID THAT HIS WIFE HAD TOLD HIM THAT HE WOULD LOSE HIS JOB IF HE JOINED THE UNION, BUT THERE WAS NO EVIDENCE OF ANY SIMILAR THREAT FROM SASLOVE.

IN FACT, KOSKO STATED THAT THE LATTER TOLD HIM TO DO AS HE LIKED WITH REGARD TO THE PETITION. HIS EVIDENCE WAS THAT SASLOVE DID NOT EXPRESS HIS PREFERENCE IN THE MATTER.

7. THE EVIDENCE WITH RESPECT TO COSTINE JOHN WAS SOMEWHAT DIFFERENT. THIS MAN IS NO LONGER AN EMPLOYEE OF THE RESPONDENT; HE HAD QUIT OF HIS OWN ACCORD. HE STATED THAT "THE GUYS" ASKED HIM TO JOIN THE UNION AND HE HAD DONE SO. HE TOLD THE BOARD THAT SASLOVE RETURNED FROM HOLIDAYS ABOUT THAT TIME AND CALLED HIM INTO THE OFFICE. SASLOVE SAID TO JOHN THAT HE UNDERSTOOD THE EMPLOYEES NOW HAD A UNION. THE WITNESS STATED THAT SASLOVE THEN TOLD HIM THAT HE COULD NOT PREVENT THE EMPLOYEES FROM HAVING A UNION. SASLOVE WENT ON TO SAY, HOWEVER, THAT IF THE UNION CAME IN IT WOULD CUT THE HOURS TO THIRTY-FIVE FROM FORTY PER WEEK.

8. JOHN WAS EMPLOYED AS A CUTTER. HIS JOB INVOLVED CUTTING BEAMS AND RODS WITH A TORCH. THIS WORK WAS NORMALLY DONE OUTSIDE, BUT ON COLD DAYS IN THE WINTER IT HAD BEEN CUSTOMARY TO ALLOW JOHN TO DO THE CUTTING INDOORS. HIS TESTIMONY WAS THAT DURING THE INTERVIEW WITH SASLOVE, THE LATTER TOLD HIM THAT IF THE UNION CAME IN, ALL THE WORK WOULD HAVE TO BE DONE OUTSIDE. SASLOVE, ALSO INFORMED JOHN THAT KOSKO HAD SIGNED A PETITION AGAINST THE UNION. JOHN THEN ALSO SIGNED THE PETITION, ALTHOUGH SASLOVE TOLD HIM HE DID NOT HAVE TO SIGN IT, IT WAS UP TO HIM. SASLOVE TOLD JOHN THAT ALL THAT HE NEEDED WERE THE TWO SIGNATURES ON THE PETITION.

9. IT IS QUITE CLEAR THAT SASLOVE'S MOTIVE IN APPROACHING THE TWO EMPLOYEES AS HE DID, WAS PRIMARILY TO INDUCE THEM TO SIGN A PETITION. IT WAS JOHN'S EVIDENCE THAT, TO THE BEST OF HIS KNOWLEDGE, NO OTHER EMPLOYEES HAD BEEN APPROACHED BY SASLOVE. THERE WAS NO OTHER EVIDENCE WHICH WOULD SUGGEST OTHERWISE. THE STATEMENT MADE TO JOHN WITH RESPECT TO HAVING TO WORK OUTSIDE THROUGHOUT THE WINTER WAS ONE THAT APPLIED TO HIM AND NOT TO OTHER EMPLOYEES.

10. THERE IS LITTLE OF REAL SIGNIFICANCE, INSOFAR AS THE APPLICANT'S REQUEST TO THE BOARD IS CONCERNED IN THE EVIDENCE WITH RESPECT TO KOSKO. HE WAS SIMPLY ASKED TO SIGN THE PETITION AND HAVING BEEN AT LEAST PARTIALLY CONDITIONED BY HIS WIFE, HE DID SO.

11. THE QUESTION REMAINS AS TO WHETHER THE STATEMENTS MADE TO JOHN WITH RESPECT TO REDUCTION IN WORKING HOURS AND THE CESSATION OF THE PRACTICE OF WORKING INDOORS ON COLD DAYS (HAVING IN MIND THAT THE LATTER APPLIED ONLY TO HIM) ARE LIKELY TO INTERFERE WITH THE TRUE WISHES OF THE EMPLOYEES IN A REPRESENTATION VOTE.

12. THERE CAN BE NO DOUBT THAT THE CONDUCT OF SASLOVE CANNOT EVEN APPEAR TO BE CONDONED IN ANY DEGREE BY THE BOARD AS IT CLEARLY INVOLVED IMPROPER INTERFERENCE WITH THE EMPLOYEES. THE BOARD, HOWEVER, IS NOT OF THE OPINION THAT THE IMPROPER BEHAVIOUR WAS SUCH THAT THE TRUE WISHES OF THE EMPLOYEES WOULD NOT BE DISCLOSED IN A REPRESENTATION VOTE.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE

RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

15. THE BOARD DIRECTS THAT SASLOVE AND ANY OTHER PERSONS CONCERNED WITH THE MANAGEMENT OF THE ENTERPRISE REFRAIN FROM ANY IMPROPER INTERFERENCE WITH EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT, PRECEDING AND DURING THE TAKING OF THE REPRESENTATION VOTE. IN ORDER THAT EMPLOYEES MAY BE AWARE OF THE BOARD'S DIRECTION THE RESPONDENT IS TO POST COPIES OF THIS DECISION, WHERE IT MAY BE SEEN BY ALL EMPLOYEES CONCERNED.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: August 17, 1973.

1. THE APPLICANT UNION IS SEEKING THE RELIEF PROVIDED BY SECTION 7(4) OF THE LABOUR RELATIONS ACT, WHICH READS AS FOLLOWS:

"IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE."

THERE ARE EIGHT EMPLOYEES IN THE UNIT AND THERE ARE FIVE MEMBERSHIP DOCUMENTS, THUS MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION. HOWEVER, THE APPLICANT IS ONE SHORT OF THE SIX THAT WOULD BE REQUIRED FOR 65 PER CENT AND OUTRIGHT CERTIFICATION.

2. THERE IS CLEAR EVIDENCE THAT MARTIN SASLOVE IS THE BOSS AND IS SO REGARDED BY THE EMPLOYEES. WHILE SASLOVE WAS ON HOLIDAYS, UNION MEMBERSHIP CARDS WERE SIGNED BY EMPLOYEES, INCLUDING COSTINE JOHN. WHEN SASLOVE RETURNED FROM HOLIDAYS, HE INTERROGATED EMPLOYEES AND URGED SOME OF THEM TO SIGN A PETITION AGAINST THE UNION. SASLOVE ORIGINATED, PREPARED AND CIRCULATED THE PETITION THAT HE PRESENTED TO COSTINE JOHN FOR SIGNATURE. JOHN WAS SUMMONED TO SASLOVE'S OFFICE FOR THIS PURPOSE AT ABOUT 4 P.M. ON A MONDAY. JOHN WORKED AFTERNOONS AND STARTED HIS SHIFT AT 4 P.M. THE CONVERSATION THAT ENSUED, AS TESTIFIED BY JOHN WAS:

SASLOVE: I UNDERSTAND THAT YOU ALL HAVE A UNION.

JOHN: YES.

SASLOVE: WHAT DO YOU KNOW ABOUT THE UNION?

JOHN: THE GUYS ASKED ME TO JOIN.

SASLOVE: I CAN'T PREVENT YOU ALL FROM HAVING A UNION HERE, BUT MOST OF THE TIME WHEN I HAVE WORK TO DO AT NIGHT YOU COULD BE IN THE COLD OUTSIDE - IF THE UNION IS HERE, YOU WILL DO IT OUTSIDE. JOHN KASKO SAID HE IS AGAINST THE UNION.

JOHN: IF JOHN SIGNED, I WILL SIGN AGAINST IT.

COSTINE JOHN THEN TESTIFIED THAT SASLOVE GAVE HIM A PAPER TO SIGN AGAINST THE UNION, AND HE SIGNED IT. JOHN ALSO TESTIFIED THAT DURING THIS CONVERSATION, SASLOVE SAID "IF THE UNION COMES IN, THE HOURS WILL BE CUT TO 35 A WEEK". THE HOURS BEING WORKED AT THAT TIME WERE 40 PER WEEK. NOTHING ELSE WAS SAID.

3. COSTINE JOHN FURTHER TESTIFIED THAT TWO OR THREE WEEKS LATER, HENRY, A TRUCK DRIVER, BROUGHT ANOTHER PAPER AGAINST THE UNION. "THE FOREMAN, GORDIE, SIGNED, AND I SIGNED AFTER, IN THE SHOP. KASKO SIGNED THE SAME DAY I DID, IN THE SHOP". COSTINE JOHN SAID HE WAS CALLED INTO THE OFFICE ONLY ONCE. CROSSEXAMINED, COSTINE JOHN WAS UNSHAKEN IN HIS TESTIMONY AND FURTHER STRENGTHENED HIS EVIDENCE BY INSISTING THAT SASLOVE DID NOT SAY "IT'S UP TO YOU" WITH RESPECT TO SIGNING THE PAPER PRESENTED BY SASLOVE. HE AMPLIFIED HIS TESTIMONY BY RECALLING THAT HE TOLD SASLOVE: "BEFORE I SIGN, GET THE REST IN TO SIGN". SASLOVE'S REPLY TO THIS WAS, "I WANT TWO TO SIGN. KASKO HAS SIGNED".

4. CROSSEXAMINED ON THE CIRCUMSTANCES SURROUNDING THE SECOND PAPER HE SIGNED IN THE SHOP, HE TESTIFIED THAT HENRY LETT, AN EMPLOYEE, BROUGHT IT AROUND AND THAT GORDON, A FOREMAN, SIGNED IT. IN 1968, COSTINE JOHN WAS TOLD BY MARTIN SASLOVE, CONCERNING GORDON, "HERE IS YOUR FOREMAN". JOHN SAID "THE OTHERS THOUGHT SO, TOO". HE SAID HE DIDN'T READ THE PAPER AND DIDN'T KNOW WHAT IT MEANT, BUT THAT "LETT SIGNED, GORD SIGNED, CALVERT SIGNED AND I SIGNED". THE LAST HE SAW OF THIS PAPER WAS THAT HE OBSERVED LETT TAKE IT TO THE OFFICE RIGHT AFTER HE SIGNED IT. THE FINAL TESTIMONY OF COSTINE JOHN WAS THAT WHEN HE WAS IN THE OFFICE WITH SASLOVE AND SIGNED THE PAPER PRESENTED BY SASLOVE, THE CONVERSATION WENT ON FOR THREE QUARTERS OF AN HOUR.

5. THE EVIDENCE AND CIRCUMSTANCES OF THIS CASE CRY OUT FOR CERTIFICATION UNDER SECTION 7(4) OF THE ACT, AS I UNDERSTAND THE TESTIMONY OF BOTH WITNESSES. THAT JOHN WOULD NOT BE ELIGIBLE TO VOTE, CANNOT CHANGE THE INFERENCE THAT MUST BE ATTACHED TO THESE MATTERS, I.E. MEN TALK, AND WHAT HAPPENED TO JOHN IS UNDUE INFLUENCE THAT HE WOULD, IN ALL PROBABILITY, HAVE DISCUSSED WITH HIS FELLOW WORKERS WHO INDUCED HIM TO JOIN THE UNION WHILE HE WAS STILL EMPLOYED.

6. THERE IS ABSOLUTELY NO DOUBT THAT THE BOARD SHOULD AWARD OUT-RIGHT CERTIFICATION IN THIS CASE, AND I SO FIND.

1205-71-R: THE ONTARIO ERECTORS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #2) V. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #3) V. THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (INTERVENER #4) V. THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #6).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS. E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ROBIN B. CUMINE AND S. C. ECCLES FOR THE APPLICANT; H. A. HERRON FOR THE RESPONDENT; B. W. BINNING FOR INTERVENERS #1, #2, #3, #4 AND #5; B. H. STEWART, H. A. BERESFORD, W. J. CHENERY AND G. PICKELL FOR INTERVENER #6.

DECISION OF THE BOARD: AUGUST 21, 1973.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR ACCREDITATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYERS OF EMPLOYEES EMPLOYED AS OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO IN THE STRUCTURAL STEEL AND MECHANICAL ERECTION SECTOR.

2. COUNSEL FOR THE APPLICANT IS REQUESTING THAT THE BOARD ESTABLISH A NEW SECTOR. IN DOING SO COUNSEL RELIES ON THE LANGUAGE OF THE DEFINITION OF "SECTOR" IN SECTION 106(E) OF THE ACT, AS GIVING THE BOARD AUTHORITY TO ACCEDE TO HIS REQUEST. SECTION 106(E) OF THE ACT READS:

106(E) "SECTOR" MEANS A DIVISION OF THE CONSTRUCTION INDUSTRY AS DETERMINED BY WORK CHARACTERISTICS AND INCLUDES THE INSTITUTIONAL SECTOR, THE RESIDENTIAL SECTOR, THE SEWERS, TUNNELS AND WATERMAINS SECTOR, THE ROADS SECTOR, THE HEAVY ENGINEERING SECTOR, THE PIPELINE SECTOR AND THE ELECTRICAL POWER SYSTEMS SECTOR;

3. COUNSEL FOR THE APPLICANT SUBMITS THAT THE WORD "INCLUDES" IN THE ABOVE DEFINITION PRIOR TO THE NAMING OF THE SEVEN SPECIFIED SECTORS CONTEMPLATES THE BOARD ESTABLISHING ADDITIONAL SECTORS TO THOSE NAMED ON THE BASIS OF "WORK CHARACTERISTICS". COUNSEL FURTHER SUBMITS THAT THE EVIDENCE WHICH HE ADDUCED ESTABLISHES THAT THE EMPLOYERS IN THE PROVINCE OF ONTARIO ENGAGED IN THE ERECTION OF STRUCTURAL STEEL AND

MECHANICAL EQUIPMENT ARE AN IDENTIFIABLE GROUP WHO HAVE A PAST HISTORY OF COLLECTIVE BARGAINING WITH THE RESPONDENT FOR THE OPERATING ENGINEERS IN THEIR EMPLOY SEPARATE AND APART FROM OTHER EMPLOYERS. COUNSEL SUBMITS THAT THE EVIDENCE ESTABLISHES AS WELL THAT THE SECTOR PROPOSED BY THE APPLICANT IS ALSO IDENTIFIABLE BY THE CHARACTER OF THE WORK PERFORMED BY THE OPERATING ENGINEERS IN THE EMPLOY OF THE SAID GROUP OF EMPLOYERS.

4. COUNSEL FOR INTERVENERS #1, #2, #3, #4 AND #5 AND COUNSEL FOR INTERVENER #6, ON THE OTHER HAND, SUBMIT THAT THE SECTORS SPELLED OUT IN SECTION 106(E), IN FACT, EXHAUST THE DIVISION OF THE CONSTRUCTION INDUSTRY AS IT EXISTS TO-DAY. COUNSEL FURTHER SUBMIT THAT THE EVIDENCE REVEALS THAT THE SECTOR PROPOSED BY THE APPLICANT WOULD NECESSARILY OVERLAP OTHER OF THE SECTORS SPECIFIED IN THE DEFINITION, SUCH AS THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE ELECTRICAL POWER SYSTEMS SECTOR. MOREOVER, ACCORDING TO COUNSEL, THE EVIDENCE MAKES IT CLEAR THAT THERE WOULD INEVITABLY BE AN ISSUE ON VIRTUALLY ALL PROJECTS INVOLVING THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT AS TO WHETHER THE EMPLOYER CONCERNED FALLS WITHIN THE PURVIEW OF THE STRUCTURAL STEEL AND MECHANICAL ERECTION SECTOR, WHICH IS OSTENSIBLY DEFINED IN TERMS OF "WORK CHARACTERISTICS", OR ONE OF THE OTHER NAMED SECTORS IN SECTION 106(E), ALL OF WHICH ARE DEFINED IN TERMS OF "PRODUCT". COUNSEL SUBMIT THAT THIS IN TURN WOULD RAISE SERIOUS QUESTIONS AS TO WHAT COLLECTIVE AGREEMENT WAS APPLICABLE TO THE OPERATING ENGINEERS WORKING ON THE PROJECT. FOR THE FOREGOING REASONS COUNSEL SUBMIT THAT THE BOARD SHOULD DECLINE TO ESTABLISH THE SECTOR PROPOSED BY THE APPLICANT.

5. BASED ON THE EVIDENCE AND REPRESENTATIONS BEFORE US, THE BOARD IS NOT SATISFIED THAT THE "WORK CHARACTERISTICS" OF THE PROPOSED STRUCTURAL STEEL AND MECHANICAL ERECTION SECTOR ARE UNIQUE TO SUCH A SECTOR. MOREOVER, THE PROPOSED SECTOR WOULD ENCOMPASS A PART OF MOST IF NOT ALL OF THE SECTORS SPECIFICALLY NAMED IN SECTION 106(E). HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE INTERVENERS HAVE JUSTIFIABLE REASONS FOR THEIR APPREHENSIONS AS TO THE RESULTS WHICH THEY ANTICIPATE WOULD FLOW WERE THE BOARD TO RECOGNIZE STRUCTURAL STEEL AND MECHANICAL ERECTION AS A SECTOR. ACCORDINGLY, IN ALL THE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO ACQUIESCE IN THE REQUEST OF THE APPLICANT AND ESTABLISH A STRUCTURAL STEEL AND MECHANICAL ERECTION SECTOR. THE BOARD THEREFORE FURTHER FINDS THAT THE UNIT OF EMPLOYERS FOR WHICH THE APPLICANT IS SEEKING ACCREDITATION IS NOT AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING.

6. WE WOULD MENTION THAT AT THE HEARING OF THE APPLICATION COUNSEL FOR THE APPLICANT PROPOSED AN ALTERNATIVE UNIT OF EMPLOYERS. MORE PARTICULARLY COUNSEL PROPOSED A UNIT COMPOSED OF ALL EMPLOYERS OF EMPLOYEES EMPLOYED AS OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO ENGAGED IN THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, THE SEWERS, TUNNELS AND WATERMAINS SECTOR, THE HEAVY ENGINEERING SECTOR, AND THE ELECTRICAL POWER SYSTEMS SECTOR.

7. WE WOULD SIMPLY STATE THAT THE OBJECTIONS OF THE BOARD TO THE ORIGINAL UNIT OF EMPLOYERS APPLIED FOR BY THE APPLICANT ARE EQUALLY APPLICABLE TO THE ABOVE ALTERNATIVE UNIT PROPOSED BY THE APPLICANT.

8. IN THE RESULT, THE APPLICATION IS DISMISSED.

488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) V. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #2) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #4) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) V. TORONTO AND DISTRICT EXCAVATORS ASSOCIATION (INTERVENER #6) V. CRANE RENTAL ASSOCIATION OF ONTARIO (INTERVENER #7).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B. W. BINNING AND G. A. BECIGNEUL FOR THE APPLICANT; B. W. BINNING FOR INTERVENERS #2, #3, #4, #5; A. M. MINSKY AND H. HERRON FOR THE RESPONDENT; ROBERT D. PERKINS AND WILLIAM T. WHITE FOR INTERVENERS #6 AND #7.

DECISION OF THE BOARD: AUGUST 21, 1973.

1. THIS IS AN APPLICATION FOR ACCREDITATION OF AN EMPLOYERS' ORGANIZATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

2. IN PARAGRAPH 7 OF THE BOARD'S DECISION OF MARCH 5, 1973, THE BOARD FOUND THAT IT WAS SATISFIED THAT THE APPLICANT WAS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE ACT AND WE ARE FURTHER SATISFIED THAT IT IS A PROPERLY CONSTITUTED ORGANIZATION FOR PURPOSES OF SECTION 115(3) OF THE ACT.

3. IN SUPPORT OF ITS APPLICATION THE APPLICANT FILED EMPLOYER AUTHORIZATIONS ON BEHALF OF 188 EMPLOYERS. THE APPLICANT HAS ALSO FILED IN SUPPORT OF ITS REPRESENTATION DOCUMENTS A DULY COMPLETED FORM 62 IN RESPECT OF THE DOCUMENTS. THE BOARD IN PARAGRAPH 7 OF ITS DECISION OF MARCH 5, 1973 FOUND THAT IT WAS SATISFIED THAT THE FORM OF EMPLOYER AUTHORIZATIONS SUBMITTED IN SUPPORT OF THE APPLICATION WAS ACCEPTABLE EVIDENCE OF REPRESENTATION IN ACCORDANCE WITH SECTION 96 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD IS THEREFORE SATISFIED THAT THE INDIVIDUAL EMPLOYERS ON WHOSE BEHALF THE APPLICANT HAS SUBMITTED EVIDENCE OF REPRESENTATION HAVE VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT.

4. IN PARAGRAPH 5 OF ITS DECISION OF MARCH 5, 1973, THE BOARD FOUND THAT ALL EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BAR-

GAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, SAVE AND EXCEPT THOSE EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS WHO ARE REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO IN THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT, CONSTITUTE AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING.

5. THE PARTIES TO THIS PROCEEDING AT A HEARING ON AUGUST 21, 1973 WERE IN AGREEMENT AS TO THE ACCURACY OF THE REPORT OF THE EXAMINER DATED APRIL 3, 1973. BY LETTER DATED JUNE 19, 1973, HOWEVER, COUNSEL RETAINED BY THE RESPONDENT SUBMITTED THAT THE EMPLOYERS REPRESENTED BY THE CRANE RENTAL ASSOCIATION OF ONTARIO OUGHT NOT TO BE INCLUDED IN THE UNIT OF EMPLOYERS WHICH THE BOARD FOUND TO BE APPROPRIATE IN PARAGRAPH 15 OF THE BOARD'S DECISION OF MARCH 5, 1973. THE BOARD ADVISED COUNSEL FOR THE RESPONDENT AND THE OTHER PARTIES THAT AT THE HEARING ON AUGUST 21, 1973 THE RESPONDENT WOULD BE AFFORDED AN OPPORTUNITY TO SHOW CAUSE AS TO WHY THE BOARD SHOULD RECONSIDER ITS DECISION OF MARCH 5, 1973 AND EXCLUDE THOSE EMPLOYERS REPRESENTED BY THE CRANE RENTAL ASSOCIATION OF ONTARIO FROM THE UNIT OF EMPLOYERS FOUND TO BE APPROPRIATE BY THE BOARD. HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE OTHER PARTIES TO THE PROCEEDING, THE BOARD RULED ORALLY AT THE HEARING ON AUGUST 21, 1973 THAT HAVING REGARD TO THE LATE DATE AT WHICH THE RESPONDENT HAS MADE ITS REQUEST AND MORE PARTICULARLY THE FACT THAT THROUGHOUT ALL OF THE LENGTHY PROCEEDINGS BEFORE THE BOARD, THE REPRESENTATIVE OF THE RESPONDENT AT THE HEARINGS HAD AT ALL TIMES AGREED THAT THE EMPLOYERS REPRESENTED BY THE CRANE RENTAL ASSOCIATION OF ONTARIO WERE APPROPRIATE FOR INCLUSION IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD, THE BOARD WAS NOT PREPARED TO RECONSIDER THE BARGAINING UNIT WHICH IT FOUND TO BE APPROPRIATE IN PARAGRAPH 15 OF ITS DECISION OF MARCH 5, 1973. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY WAS DENIED.

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8. THE BOARD FINDS THAT THE NUMBER OF EMPLOYERS ON FINAL SCHEDULE "E" TALLING 184 IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(A) OF THE ACT. ON THE BASIS OF THE EVIDENCE THE BOARD FINDS THAT ON MAY 31, 1971, THE DATE OF THE MAKING OF THE APPLICATION, THE APPLICANT REPRESENTED 105 EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE 105 EMPLOYERS SO REPRESENTED IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. THE BOARD THEREFORE IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT.

9. THE SCHEDULE "H" WHICH ACCOMPANIED THE FORM 68, EMPLOYER INTERVENTION, FILED BY THE INDIVIDUAL EMPLOYERS SETS OUT THE NUMBER OF EMPLOYEES THAT THE EMPLOYER INTERVENER HAS AT EACH JOB SITE WITH DETAILS OF THE

LOCATION AND THE TYPE OF CONSTRUCTION INVOLVED. BY SECTION 115(1)(c) THE RELEVANT PAYROLL PERIOD IS THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE MAKING OF THE APPLICATION, IN THIS CASE THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING MAY 31, 1971. HAVING REGARD TO THE EMPLOYERS WHO HAVE FILED A FORM 68 AND ITS ACCOMPANYING SCHEDULE "H" AND THE AGREEMENT RECORDED IN PARAGRAPH 5, THE BOARD IS SATISFIED THAT SUCH A PERIOD IS SATISFACTORY FOR THE DETERMINATION IN SECTION 115(1)(c).

10. ON THE BASIS OF THE EVIDENCE THE BOARD FURTHER FINDS THAT THERE WERE 469 EMPLOYEES AFFECTED BY THE APPLICATION. THE 469 EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(C) OF THE ACT. THE BOARD IS SATISFIED THAT THE 105 EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF THE EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(C). THE APPLICANT THEREFORE HAS THE "DOUBLE MAJORITY" REQUIREMENT FOR ACCREDITATION.

11. ACCORDINGLY, A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 15 OF THE BOARD'S DECISION OF MARCH 5, 1973, AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER MAY 31, 1971, OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

2421-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

DECISION OF THE BOARD: AUGUST 29, 1973.

1. THE EXAMINER APPOINTED IN THE BOARD'S DECISION OF MAY 24, 1973, IN THIS MATTER HAS NOW REPORTED TO THE BOARD. THE PARTIES HAVE BY LETTER MADE REPRESENTATIONS TO THE BOARD CONCERNING THAT REPORT. HOWEVER, NO HEARING HAS BEEN REQUESTED IN ORDER TO MAKE OBJECTION OR REPRESENTATIONS ON THE REPORT OF THE EXAMINER.

2. THE EXAMINER WAS APPOINTED TO DEAL WITH EIGHT PERSONS WHOSE NAMES APPEAR ON THE VOTERS' LIST. SHORTLY AFTER THE APPOINTMENT OF THE EXAMINER, THE APPLICANT WITHDREW ITS CHALLENGE WITH RESPECT TO TWO OF THESE PERSONS AND ACCORDINGLY THE BOARD FINDS THAT V. POWELL AND A. DOOLITTLE ARE EMPLOYEES ENTITLED TO CAST A BALLOT IN THIS MATTER. THE EXAMINER'S REPORT DEALT WITH THE REMAINING SIX EMPLOYEES AND WE WILL

DEAL WITH THESE EMPLOYEES IN THE ORDER IN WHICH THEY APPEAR IN THE EXAMINER'S REPORT.

3. IT IS APPARENT THAT W. JACKUBIEC ON APRIL 16, 1973, THE DAY THE VOTE WAS DIRECTED WAS EMPLOYED BY THE RESPONDENT. HIS DUTIES IN THE COURSE OF HIS EMPLOYMENT INCLUDED CLEANING VARIOUS PARTS OF THE PREMISES OF THE RESPONDENT AND LOOKING AFTER THE LANDSCAPING AT THE RESPONDENT'S OPERATIONS IN CAYUGA. ACCORDINGLY THE BOARD IS SATISFIED THAT W. JACKUBIEC WAS AN EMPLOYEE IN THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN ITS DECISION OF APRIL 16, 1973, AND THUS ENTITLED TO CAST A BALLOT.

4. WITH RESPECT TO R. BUNN, THE EXAMINER'S REPORT DISCLOSES THAT MR. BUNN IS A MECHANIC WHO WORKS ON VARIOUS EQUIPMENT OWNED BY THE RESPONDENT AND PRINCIPALLY UPON THE HEAVY EQUIPMENT OWNED BY THE RESPONDENT. IT IS, HOWEVER, CLEAR THAT HE WORKS ON EQUIPMENT BOTH AT THE SAND AND GRAVEL OPERATION WHICH IS THE SUBJECT MATTER OF THIS APPLICATION, AND ALSO ON EQUIPMENT RELATING TO THE ROAD BUILDING OPERATIONS OF THE RESPONDENT. WE ARE, HOWEVER, SATISFIED THAT THIS EMPLOYEE WORKS "AT OR OUT OF" THE RESPONDENT'S OPERATION AT CAYUGA AND THEREFORE WAS AN EMPLOYEE IN THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN ITS DECISION OF APRIL 16, 1973, AND THUS ENTITLED TO CAST A BALLOT.

5. THE REPORT OF THE EXAMINER DEALS WITH FOUR OTHER EMPLOYEES: J. PEPPER, H. PHIBBS, H. HARRIS AND B. MILLER. WITH RESPECT TO THESE EMPLOYEES WE ARE OF THE VIEW THAT ON APRIL 16, 1973, THEY WERE EMPLOYED AT VARIOUS ROAD BUILDING OPERATIONS OF THE RESPONDENT COMPANY. MR. PEPPER IS A BULLDOZER OPERATOR AND WAS WORKING AT A JOB SITE IN OAKLAND OR IN TILLSONBURG AT THAT TIME. MR. PHIBBS WAS PART OF A PAVING CREW AND AT THAT TIME WAS ALSO WORKING AT THE JOB SITE IN EITHER OAKLAND OR TILLSONBURG. MR. HARRIS WHO WAS NOT SURE AND WHO THOUGHT HE MIGHT BE WORKING IN THE QUARRY ON APRIL 16, 1973, IS IN DIRECT CONFLICT WITH MR. MILLER WHO SAID THAT HE WAS EMPLOYED AT A PAVING JOB AT A PLAZA IN SIMCOE UNDER THE DIRECTION OF HAROLD HARRIS. ACCORDINGLY, THE BOARD FINDS THAT ALL FOUR OF THESE PERSONS FALL WITHIN THE EXCLUSION OF THE BARGAINING UNIT OF "EMPLOYEES ENGAGED IN THE RESPONDENT'S ROAD BUILDING OPERATION".

6. AS NOTED IN THE BOARD'S DECISION OF MAY 24, 1973, EIGHT OF THE BALLOTS CAST AT THE VOTE CONDUCTED AMONGST THE EMPLOYEES IN THE BARGAINING UNIT WERE SEGREGATED. THE REMAINING BALLOTS WERE COUNTED AND OF THESE FOURTEEN WERE CAST IN FAVOUR OF THE APPLICANT, SEVEN WERE CAST AGAINST THE APPLICANT AND ONE WAS SPOILED. IN ACCORDANCE WITH THE BOARD'S DECISION IN LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA V. ARROW TIMBER COMPANY LIMITED, (1973) JANUARY OLRB REPS. 61, TWENTY-ONE VOTES HAVE BEEN CAST SO FAR. IN RESPECT OF THE SEGREGATED BALLOTS FOUR OF THESE WERE CAST BY PERSONS THE BOARD FINDS ARE NOT IN THE BARGAINING UNIT. THE REMAINING FOUR BALLOTS BRING THE TOTAL POSSIBLE NUMBER OF BALLOTS CAST TO TWENTY-FIVE. THE BOARD FINDS THAT THE APPLICANT HAS MORE THAN FIFTY

PER CENT OF THE BALLOTS AND A COUNT OF THE REMAINING FOUR SEGREGATED BALLOTS, NOT YET COUNTED, COULD HAVE NO EFFECT ON THE OUTCOME OF THIS DECISION, REGARDLESS OF WHICH WAY THEY ARE CAST. ACCORDINGLY, THE BOARD DOES NOT DEEM IT NECESSARY TO COUNT THE REMAINING FOUR BALLOTS.

7. IN VIEW OF THE ABOVE CONSIDERATIONS THE BOARD IS SATISFIED THAT ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS CAST WERE CAST IN FAVOUR OF THE APPLICANT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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3909-73-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARMBRO MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: August 29, 1973.

1. AT THE MEETING HELD BY THE EXAMINER HEREIN ON JULY 17, 1973, THE PARTIES AGREED TO A STATEMENT OF FACTS GOVERNING THE ISSUES BEFORE THE EXAMINER. THE PARTIES FURTHER AGREED THAT THE STATEMENT OF FACTS SHOULD BECOME AND FORM PART OF THE EXAMINER'S REPORT HEREIN AND THAT IT WOULD SERVE IN LIEU OF A FORMAL REPORT BY THE EXAMINER.

2. THE APPLICANT APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF THE TOWNSHIP OF CHINGUACOUSY WITH CERTAIN SPECIFIED EXEMPTIONS.

3. THE RESPONDENT PROPOSED THAT BY REASON OF THE NATURE OF ITS OPERATIONS THERE SHOULD BE THREE SEPARATE BARGAINING UNITS. IT WAS PROPOSED THAT ONE UNIT BE COMPRISED OF THE EMPLOYEES ENGAGED IN THE GRAVEL PIT OPERATIONS, THE SECOND, OF EMPLOYEES ENGAGED IN TRUCK DRIVING OPERATION INCLUDING TANDEM DUMPS, TRACTORS AND FLOATS, AND THE THIRD, OF EMPLOYEES IN THE SHOP AND YARD OPERATION.

4. ON THE BASIS OF THE STATEMENT OF FACTS AGREED UPON BY THE PARTIES, THE BOARD FINDS THAT EMPLOYEES CLASSIFIED AS STOCK KEEPERS APPEAR TO FALL WITHIN THE EXCLUSION OF OFFICE AND SALES STAFF AND ARE, FOR THAT REASON, EXCLUDED FROM THE BARGAINING UNITS.

5. HAVING REGARD TO THE FACTS AGREED UPON BY THE PARTIES AND APPLYING TO THEM THE PRINCIPALS SET OUT IN THE USARCO LIMITED CASE, OLRB M.R. SEPTEMBER 1967, P. 526, THE BOARD FINDS THAT:

ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE AGGREGATE PRODUCTION OPERATION AT THE RESPONDENT'S PIT IN LOTS 11 AND 12 CONCESSION 2 EAST IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT DISPATCHERS, SCALEMEN, CLERKS, TECHNICIANS, STOCK KEEPERS, OFFICE AND SALES STAFF, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1);

ALL YARD AND SHOP EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICING AND ASPHALT PRODUCTION AT THE RESPONDENT'S YARD IN LOT 11 CONCESSION 1 WEST IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT DISPATCHERS, SCALEMEN, CLERKS, TECHNICIANS, STOCK KEEPERS, OFFICE AND SALES STAFF, CAFETERIA STAFF, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2);

ALL DRIVERS EMPLOYED BY THE RESPONDENT WORKING AT AND OUT OF THE RESPONDENT'S YARD IN LOT 11 CONCESSION 1 WEST IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT DISPATCHERS, SCALEMEN, CLERKS, TECHNICIANS, STOCK KEEPERS, OFFICE AND SALES STAFF, CAFETERIA STAFF, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #3).

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNITS #1 AND #3, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 14, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. CERTIFICATES WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNITS #1 AND #3.

8. THE BOARD IS FURTHER SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 14, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

3695-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

- AND -

3696-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARINGS: S. R. HENNESSY, H. LENNON AND G. MACDONALD FOR THE COMPLAINANT; R. T. PAYTON, Q.C. FOR THE RESPONDENT.

DECISION OF THE BOARD: August 29, 1973.

1. THE BOARD DIRECTS THAT THE ABOVE COMPLAINTS BE CONSOLIDATED.

. . .

3. THE COMPLAINANT HAS COMPLAINED THAT PHILIP BRADY AND ROBERT DAVIS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THAT THE AGGRIEVED PERSONS BE REINSTATED IN THEIR EMPLOYMENT WITH COMPENSATION.

4. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT OPERATED A SHELTER AT BRANTFORD UNDER THE SUPERVISION OF MRS. LACKENBAUER, THE MANAGER OF THE SHELTER. MRS. LACKENBAUER EXERCISED HER FUNCTIONS UNDER THE DIRECTION

OF JAMES COSGROVE, THE REGIONAL INSPECTOR OF THE RESPONDENT. THE EVIDENCE FURTHER ESTABLISHED THAT MRS. LACKENBAUER HAD NO PRIOR MANAGERIAL EXPERIENCE. MR. COSGROVE WAS NOT SATISFIED WITH THE MANNER IN WHICH THE SHELTER WAS OPERATED AND ON JANUARY 18, 1973 CAUSED THE FOLLOWING MEMO TO THE STAFF TO BE POSTED:

I FIND IT NECESSARY TO ONCE AGAIN REMIND ALL EMPLOYEES THAT COFFEE BREAKS SHOULD NOT EXCEED 15 MINUTES.

DRIVERS ARE AGAIN REMINDED THAT THEY SHOULD BE OUT ON THE ROAD PATROLLING THE CITY, NOT SITTING AROUND THE SHELTER.

5. AGAIN, ON FEBRUARY 6, 1973 MR. COSGROVE CAUSED TO BE POSTED A DETAILED LIST OF WORK RULES WHICH CONCLUDED WITH THE FOLLOWING STATEMENT:

ANY EMPLOYEE WHO DOES NOT ADHERE TO THE RULES AND REGULATIONS SET FORTH IN THIS MEMO WILL BE INSTANTLY DISMISSED.

6. FINALLY, ON MARCH 26, 1973 MR. COSGROVE AGAIN CAUSED A MEMO TO BE POSTED WHICH ALL OF THE STAFF WERE REQUIRED TO SIGN. THIS MEMORANDUM CONCLUDES WITH THE FOLLOWING PARAGRAPH:

THIS WILL BE THE LAST NOTICE TO STAFF PERTAINING TO ROUTINE, PROMPTNESS, COFFEE BREAKS AND LUNCH HOURS. SHOULD ANY MEMBER OF STAFF CHOOSE TO IGNORE THIS NOTICE, AS THEY HAVE WITH PREVIOUS NOTICES, I WILL HAVE NO CHOICE BUT TO TAKE THE NECESSARY ACTION.

7. IT IS READILY APPARENT FROM THE EVIDENCE THAT MR. COSGROVE ACTIVELY ATTEMPTED TO UPGRADE THE PERFORMANCE OF THE STAFF AT THE BRANTFORD SHELTER. HOWEVER, BECAUSE OF MRS. LACKENBAUER'S INEXPERIENCE AS A MANAGER SHE FAILED TO PROPERLY IMPLEMENT MR. COSGROVE'S DIRECTIVES AND INSTEAD CHOSE TO ATTEMPT TO OBTAIN THE COOPERATION OF THE STAFF BY ADOPTING AN INFORMAL AND FRIENDLY ATTITUDE TOWARDS THE EMPLOYEES. MRS. LACKENBAUER'S PERFORMANCE AS A MANAGER CLEARLY DEMONSTRATED HER LACK OF EXPERIENCE. IT IS CLEAR FROM THE EVIDENCE THAT THE ATTITUDE OF THE STAFF AND IN PARTICULAR THE ANIMAL WARDENS BRADY AND DAVIS LEFT MUCH TO BE DESIRED IN THE MANNER IN WHICH THEY PERFORMED THEIR DUTIES. THE EVIDENCE FURTHER ESTABLISHED THAT BRADY'S TREATMENT OF ANIMALS WAS NOT CONSISTENT WITH WHAT ONE WOULD EXPECT OF AN ANIMAL WARDEN EMPLOYED BY THE RESPONDENT. MR. DAVIS ON THE OTHER HAND DEMONSTRATED A FEAR OF DOGS WHICH ONE WOULD NOT EXPECT OF AN ANIMAL WARDEN. AS A RESULT OF MRS. LACKENBAUER'S MANAGERIAL PRACTICES, THE DISCIPLINE IN THE SHELTER DETERIORATED AND THE ATTITUDE OF MESSRS. BRADY AND DAVIS DECLINED TO THE POINT WHERE THEY DEMONSTRATED NO RESPECT FOR MRS. LACKENBAUER AS A MANAGER. AT THE SAME TIME AS THE DISCONTENT OF BRADY AND DAVIS WAS

BEING DEMONSTRATED BY THEIR ATTITUDE TOWARDS THEIR JOB AND MRS. LACKENBAUER, THEY DEMONSTRATED INTEREST IN THE COMPLAINANT UNION. IT BECAME KNOWN THAT THE EMPLOYEES HAD BEEN INVITED TO A UNION MEETING ON APRIL 24. WHEN MR. HUGHES, THE GENERAL MANAGER OF THE RESPONDENT, BECAME AWARE OF THE UNION ACTIVITY HE DIRECTED MR. COSGROVE TO REQUEST THE EMPLOYEES TO POSTPONE THE UNION MEETING UNTIL SUCH TIME AS MR. HUGHES HAD AN OPPORTUNITY TO SPEAK TO THEM. MESSRS. BRADY AND DAVIS REFUSED TO COMPLY WITH MR. HUGHES' REQUEST AND APPARENTLY ATTENDED THE UNION MEETING THAT HAD BEEN ARRANGED FOR APRIL 24.

8. SUBSEQUENTLY, ON APRIL 27 MESSRS. BRADY AND DAVIS ACCOSTED MRS. LACKENBAUER AND PROCEEDED TO BERATE HER ABOUT CONDITIONS AT THE SHELTER WHICH THEY FOUND TO BE UNSATISFACTORY AND MADE SUCH STATEMENTS AS "I WOULDN'T TRUST THAT BASTARD HUGHES AS FAR AS I COULD THROW HIM" AND "THINGS WILL BE DIFFERENT AROUND HERE WHEN THE UNION COMES IN". THE CONFRONTATION WHICH OCCURRED BETWEEN MESSRS. BRADY AND HUGHES AND MRS. LACKENBAUER ON APRIL 27 WAS NOT ENCOURAGED BY MRS. LACKENBAUER NOR WAS IT PRECIPITATED BY ANYTHING THAT SHE HAD DONE. IN OUR VIEW, THE GRIEVORS ACCOSTED MRS. LACKENBAUER IN THE MANNER IN WHICH THEY DID BECAUSE OF THEIR GENERAL DISCONTENT WITH THE RESPONDENT'S MANAGEMENT AND THEY WERE DIRECTING THEIR REMARKS TO MRS. LACKENBAUER AS A MEMBER OF MANAGEMENT IN ORDER TO MAKE THEIR VIEWS PERFECTLY CLEAR TO THE MANAGEMENT OF THE RESPONDENT. ALTHOUGH THE RELATIONSHIP BETWEEN MRS. LACKENBAUER AND THE GRIEVORS HAD PREVIOUSLY BEEN INFORMAL AND FRIENDLY, THE CONFRONTATION ON APRIL 27 WAS A CLEAR DEPARTURE FROM THAT RELATIONSHIP AND COULD MORE CORRECTLY BE DESCRIBED AS INSUBORDINATION. WHEN MRS. LACKENBAUER BROUGHT THE MATTER TO THE ATTENTION OF MR. COSGROVE, MR. COSGROVE, AFTER FIRST INTERVIEWING EMPLOYEES WHO WITNESSED THE CONFRONTATION IN ORDER TO ESTABLISH TO HIS SATISFACTION THAT THE EVENTS AS RELATED BY MRS. LACKENBAUER WERE CORRECT, SUMMONED MR. BRADY AND MR. DAVIS TO THE OFFICE WHERE HE TERMINATED THEIR EMPLOYMENT. AT THE TIME OF TERMINATION MR. COSGROVE DELIVERED TO EACH OF THE GRIEVORS A NOTICE OF DISMISSAL WHICH READS AS FOLLOWS:

BE ADVISED THAT YOUR EMPLOYMENT WITH US IS
TERMINATED IMMEDIATELY, APRIL 27, 1973.

THE REASONS FOR TERMINATION OF EMPLOYMENT ARE:

WILFUL MISCONDUCT, DISOBEDIENCE AND
WILFUL NEGLECT OF DUTY THAT HAS NOT
BEEN CONDONED BY YOUR EMPLOYER.

9. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT MRS. LACKENBAUER HAD TOLERATED CONDUCT ON THE PART OF MESSRS. BRADY AND DAVIS WHICH MR. COSGROVE HAD BEEN TRYING TO CORRECT. WE ARE SATISFIED THAT HAD MR. COSGROVE BEEN FULLY AWARE OF THE NATURE OF THEIR ACTIVITIES HE WOULD NOT HAVE TOLERATED SUCH ACTIVITIES. HOWEVER, IN VIEW OF THE FACT THAT MRS. LACKENBAUER HAD CONDONED THEIR ACTIVITIES PRIOR TO APRIL 27, IF THE RESPONDENT WAS RELYING SOLELY UPON

THEIR CONDUCT PRIOR TO APRIL 27 WE WOULD HAVE NO HESITATION IN REINSTATING THEM. HOWEVER, AS INDICATED EARLIER, THE RELATIONSHIP BETWEEN MESSRS. BRADY AND DAVIS AND MRS. LACKENBAUER HAD DETERIORATED AND FINALLY REACHED A STATE WHERE ON APRIL 27 THE GRIEVORS, THROUGH NO DIRECT FAULT OF MRS. LACKENBAUER, CONFRONTED HER IN THEIR FRUSTRATION AND ANGER WITH THE MANAGEMENT OF THE RESPONDENT AND ENGAGED IN THE INSUBORDINATE ACTIVITIES DESCRIBED ABOVE. WE ARE NOT SUGGESTING THAT THE CAUSE OF THE GRIEVORS' DISSATISFACTION WAS EITHER JUSTIFIED OR UNJUSTIFIED. THE FACT REMAINS, HOWEVER, THAT THEIR DISSATISFACTION WAS READILY APPARENT. HOWEVER THAT MAY BE, ANY DISSATISFACTION THEY HAD MIGHT HAVE BEEN REMEDIED IF THE UNION HAD BECOME THEIR BARGAINING AGENT BUT IT WOULD APPEAR THAT THEY WERE NOT PREPARED TO AWAIT THE BENEFITS OF COLLECTIVE BARGAINING BUT INSTEAD TOOK MATTERS INTO THEIR OWN HANDS AND ATTEMPTED TO VERBALLY COERCE MRS. LACKENBAUER IN THE MANNER SET OUT ABOVE. WHEN THIS OCCURENCE WAS BROUGHT TO THE ATTENTION OF MR. COSGROVE, MR. COSGROVE, CONSISTENT WITH HIS DIRECTIVES SET OUT ABOVE, IMPOSED THE DISCIPLINARY ACTION WHICH HAD BEEN INDICATED IN THE MEMOS THAT HAD BEEN PUBLISHED A FEW MONTHS BEFORE.

10. IT IS NOTED THAT THE GENERAL MANAGER OF THE RESPONDENT HAD WRONGFULLY ATTEMPTED TO IMPOSE HIMSELF ON THE COMPLAINANT'S ATTEMPTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES. HOWEVER THAT MAY BE, AN EMPLOYER'S ANTI-UNION SENTIMENTS DO NOT GIVE EMPLOYEES IMMUNITY FROM DISCHARGE FOR CAUSE. MR. COSGROVE'S REACTION TO THE INSUBORDINATION WHICH OCCURRED ON APRIL 27 WAS CONSISTENT WITH THE DIRECTIVES TO THE EMPLOYEES WHICH HE HAD CAUSED TO BE POSTED. THE INSUBORDINATION OF MESSRS. BRADY AND DAVIS ON APRIL 27 WAS NOT JUSTIFIED BY ANYTHING THAT THE RESPONDENT DID.

11. HAVING CONSIDERED ALL THE EVIDENCE AND HAVING ASSESSED THAT EVIDENCE IN LIGHT OF THE CRITERIA ENUNCIATED BY THE BOARD IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, 63 CLLC ¶16,278, WE FIND THAT ALTHOUGH THE TIMING OF THE DISCHARGES CORRESPONDED WITH THE UNION'S ORGANIZING ATTEMPTS AND EVEN THOUGH THE RESPONDENT'S GENERAL MANAGER HAD DEMONSTRATED AN ANTI-UNION BIAS, THAT THE EVENTS OF APRIL 27 WERE SUFFICIENT CAUSE FOR THE DISCIPLINE IMPOSED BY MR. COSGROVE, ESPECIALLY IN LIGHT OF THE GENERAL DISCONTENT WITH THE MANNER IN WHICH THE ANIMAL WARDENS HAD PERFORMED THEIR FUNCTIONS AS EVIDENCED BY THE STATEMENTS APPEARING IN THE MEMORANDUM HE CAUSED TO BE POSTED FOR THE ATTENTION OF ALL THE EMPLOYEES AT THE BRANTFORD SHELTER.

12. WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT MR. BRADY AND MR. DAVIS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINTS ARE THEREFORE DISMISSED.

4016-73-U: SERVICE EMPLOYEES UNION, LOCAL 210 A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. E. AND A. MANAGEMENT ENTERPRISES LIMITED CARRYING ON BUSINESS AS WINDSOR TELEPHONE ANSWERING SERVICE (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: TED WOHL AND BRUCE JANISSE FOR THE COMPLAINANT; PHILIP McCULLOUGH, FLO ROMIENS AND THOMAS ECHLIN FOR THE RESPONDENT.

DECISION OF THE BOARD:

AUGUST 29, 1973.

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2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT HAS ALLEGED THAT KATHRYN CASTERSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 58 OF THE ACT.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, IT IS READILY APPARENT THAT THIS MATTER MUST BE DECIDED ON THE CREDIBILITY OF THE WITNESSES. THE COMPLAINANT CALLED MRS. CASTERSON AS ITS ONLY WITNESS-IN-CHIEF. IF WE ARE TO BELIEVE THAT THE TRUE FACTS OF THIS CASE ARE AS RELATED BY MRS. CASTERSON WE WOULD HAVE TO FIND THAT NOT ONLY THE RESPONDENT'S PRESIDENT AND THE RESPONDENT'S MANAGER (WHOSE INTEREST IN THE OUTCOME IS OBVIOUS) WERE INCORRECT IN THEIR TESTIMONY, BUT WE WOULD ALSO HAVE TO FIND THAT THE OTHER EMPLOYEES WHO WERE CALLED TO TESTIFY ON BEHALF OF THE RESPONDENT DID NOT TELL THE TRUTH.

4. EVEN THOUGH ALL THE WITNESSES MAY HAVE BEEN RELATING THE FACTS AS THEY UNDERSTOOD THEM, WE MUST FIND THAT THE EVENTS WHICH LED TO MRS. CASTERSON'S DISCHARGE AS RELATED BY THE SIX COMPANY WITNESSES ARE MORE RELIABLE THAN THE FACTS AS RELATED BY MRS. CASTERSON.

5. IN THESE CIRCUMSTANCES WE MUST THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT KATHRYN CASTERSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE ACT.

6. WE ACCORDINGLY FIND THAT THE COMPLAINT MUST BE DISMISSED.

3472-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. FORT FRANCES CLINIC HOLDINGS LIMITED AND FORT FRANCES CLINIC (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: W.A. ACTON FOR THE APPLICANT; ROBERT D. WEILER FOR THE RESPONDENT.

DECISION OF THE BOARD:

AUGUST 30, 1973.

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4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT IT IS APPROPRIATE TO HAVE SEPARATE BARGAINING UNITS FOR EACH OF THE RESPONDENTS.

FORT FRANCES CLINIC HOLDINGS LIMITED

5. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF FORT FRANCES CLINIC HOLDINGS LIMITED, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FINDS THAT THE CARETAKER WHOSE DUTIES AND RESPONSIBILITIES INCLUDE CLEANING THE OFFICE IS PROPERLY INCLUDED IN THE AFORESAID BARGAINING UNIT.
7. THE ONLY REMAINING EMPLOYEE OF FORT FRANCES CLINIC HOLDINGS LIMITED IS A LAUNDRESS WHO WAS INVOLVED IN THE CLEANING OF UNIFORMS WORN BY OFFICE EMPLOYEES, AND OTHER RELATED MATTERS. IT HAS BEEN THE BOARD'S PRACTICE WHERE THERE IS ONE REMAINING EMPLOYEE AT THE DATE OF THE MAKING OF THE APPLICATION WHO MAY NOT, STRICTLY SPEAKING, FALL INTO THE BARGAINING UNIT AND WHO THEREFORE WOULD BE DENIED COLLECTIVE BARGAINING AND THE RIGHT TO REPRESENTATION BY REASON OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT SUCH AN EMPLOYEE, IF THAT EMPLOYEE IS A MEMBER OF THE TRADE UNION SEEKING CERTIFICATION, BE INCLUDED IN THE BARGAINING UNIT. ACCORDINGLY, THE BOARD DETERMINES THAT LILLIAN MCINTOSH, LAUNDRESS, IS INCLUDED IN THE AFORESAID BARGAINING UNIT.
- . . .
10. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 5 ABOVE.

FORT FRANCES CLINIC

11. ACCORDING TO THE SUBMISSIONS OF THE PARTIES IT APPEARS THAT THERE ARE NINE EMPLOYEES EMPLOYED BY FORT FRANCES CLINIC WHO WORK IN THE OFFICES OF INDIVIDUAL DOCTORS AND IN THE MAIN ARE SUPERVISED BY THOSE DOCTORS. THEY ARE ALL REGISTERED NURSING ASSISTANTS AND SOME ARE EMPLOYED BY FORT FRANCES CLINIC. THEIR WORK IS MORE SPECIALIZED THAN THE NORMAL OFFICE EMPLOYEE WHO MIGHT WORK FOR A DOCTOR, IN THAT THEY APPLY THEIR REGISTERED NURSING TRAINING TO THE SERVICES THEY PERFORM. THAT IS NOT TO SAY THAT INCLUDED IN THEIR WORK IS NOT SOME MINOR OFFICE WORK. THE BOARD WAS ADVISED, HOWEVER, THAT THE BULK OF THE OFFICE WORK WAS PERFORMED BY THE PERSONS WHO ARE EMPLOYED BY FORT FRANCES CLINIC HOLDINGS LIMITED.
12. APART FROM THESE REGISTERED NURSING ASSISTANTS THERE ARE NO OTHER EMPLOYEES OF FORT FRANCES CLINIC. THE BOARD WISHES TO NOTE THAT THIS IS NOT THE TYPE OF SITUATION THAT ARISES IN CONNECTION WITH REGISTERED NURSING ASSISTANTS WHO ARE EMPLOYED BY HOSPITALS. ACCORDINGLY, IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE NATURE OF THE OPERATION

AND TO THE REPRESENTATIONS THAT THESE PERSONS ARE THE ONLY PERSONS EMPLOYED BY FORT FRANCES CLINIC, WE DO NOT DEEM IT APPROPRIATE TO DESCRIBE THE BARGAINING UNIT AS AN "ALL REGISTERED NURSING ASSISTANT'S" UNIT. ACCORDINGLY, THE BOARD FINDS THAT ALL EMPLOYEES OF FORT FRANCES CLINIC, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 12 ABOVE.

CASE LISTINGS AUGUST 1973

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UNIT: "ALL EMPLOYEES OF THE REGIONAL MUNICIPALITY OF WATERLOO IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN AND CHIEF OPERATORS, PERSONS ABOVE THE RANK OF FOREMAN AND CHIEF OPERATOR, OFFICE, CLERICAL AND LABORATORY STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		67
NUMBER OF PERSONS WHO CAST BALLOTS		50
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 68	46	
NUMBER OF BALLOTS MARKED AGAINST INTERVENER	3	

UNIT: "ALL EMPLOYEES OF THE CORPORATION OF THE CITY OF CAMBRIDGE IN ITS PUBLIC WORKS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS		24
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	16	

3129-72-R: LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANTS) V. DARRIGO'S FOOD MARKETS-ONTARIO LTD. (RESPONDENT) V. BUSY B DISCOUNT FOODS LIMITED (PREDECESSOR EMPLOYER). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

3053-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. F. G. BRADLEY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

3362-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGRILLER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

3682-73-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL UNION No. 1703 - C.L.C. (APPLICANT) V. UNDERWRITERS' LABORATORIES OF CANADA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTOS). (REQUEST DENIED).

3721-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TOLEDO SCALE DIVISION OF RELIANCE ELECTRIC LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - LOCK-OUT

3619-73-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. MCKENNA BROTHERS LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

3193-72-U: BRYCE MUGFORD (COMPLAINANT) V. THAMES VALLEY BEVERAGES (LONDON, ONTARIO) (RESPONDENT).

- AND -

3195-72-U: JOHN ROUSSEL (COMPLAINANT) V. THAMES VALLEY BEVERAGES (LONDON, ONTARIO) (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONAL

DISPUTE

3970-73-JD: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL 48 (COMPLAINANT) V. A. V. HALLAM LATHING AND PLASTERING LIMITED, AND INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL 1891 (RESPONDENTS). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1973

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) V. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #2) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #4) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) V.

TORONTO AND DISTRICT EXCAVATORS ASSOCIATION (INTERVENER #6) v. CRANE RENTAL ASSOCIATION OF ONTARIO (INTERVENER #7).

UNIT: "ALL EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, SAVE AND EXCEPT THOSE EMPLOYERS OF OPERATING ENGINEERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS WHO ARE REGULARLY EMPLOYED THROUGHOUT THE PROVINCE OF ONTARIO IN THE ERECTION OF STRUCTURAL STEEL AND MECHANICAL EQUIPMENT." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 446.

3186-72-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L. C.I.O., C.L.C. (APPLICANT) v. BONNIE BRAE NURSING HOME LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TAVISTOCK, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 415.

3335-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES LOCAL UNION 1891 (APPLICANT) v. EMPIRE LATHING AND INSULATING COMPANY LTD. (RESPONDENT) v. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562 (INTERVENER).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

3461-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. CANADIAN INSTANT BUILDINGS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

3472-72-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. FORT FRANCES CLINIC HOLDINGS LIMITED AND FORT FRANCES CLINIC (RESPONDENTS).

FORT FRANCES CLINIC HOLDINGS LIMITED

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF FORT FRANCES CLINIC HOLDINGS LIMITED, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

FORT FRANCES CLINIC

UNIT: "ALL EMPLOYEES OF FORT FRANCES CLINIC, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 456.

3583-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TOWLAND-HEWITSON CONSTRUCTION LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE RESPONDENT'S SHOP IN JAFFRAY MELLICK TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3761-73-R: NURSES' ASSOCIATION NORTHWESTERN GENERAL HOSPITAL (APPLICANT) V. NORTHWESTERN GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN A NURSING CAPACITY AT METROPOLITAN TORONTO, SAVE AND EXCEPT HEAD NURSES, CO-ORDINATORS, AND PERSONS ABOVE THE RANKS OF HEAD NURSE AND CO-ORDINATOR." (225 EMPLOYEES IN THE UNIT).

3768-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

3769-73-R: TEAMSTERS LOCAL 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ALF COOPER & CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF PAIPOONGE

TOWNSHIP IN THE DISTRICT OF THUNDER BAY AND ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE MUNICIPALITY OF THE CITY OF THUNDER BAY, SAVE AND EXCEPT FOREMEN, DISPATCHERS, THOSE ABOVE THE RANK OF FOREMAN AND DISPATCHER AND OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3908-73-R: NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT OTTAWA ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA." (241 EMPLOYEES IN THE UNIT). (HAVING REGARD TO ALL OF THE FOREGOING).

UNIT #2: "ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (14 EMPLOYEES IN THE UNIT).

3910-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. THOMAS CONSTRUCTION (GALT) LIMITED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 437.

3917-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CO-OPERATIVE REGIONALE DE NIPISSING-SUDBURY LIMITED (RESPONDENT).

- AND -

3918-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CO-OPERATIVE REGIONALE DE NIPISSING-SUDBURY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICTS AND NIPISSING AND SUDBURY, SAVE AND EXCEPT FOREMEN AND STORE MANAGERS, PERSONS ABOVE THE RANK OF FOREMAN AND STORE MANAGER, SALES SUPERVISOR, SALESMEN, SECRETARY TO THE GENERAL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE HARDWARE STORE MANAGER AND GROCERY STORE MANAGER AT VERNER ARE NOT INCLUDED IN BARGAINING UNIT #1).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

3974-73-R: WATERLOO REGIONAL SCHOOL BUS DRIVERS ASSOCIATION (APPLICANT) V. LISHMAN SCHOOL LINES (WATERLOO-WELLINGTON) LIMITED (RESPONDENT).

UNIT: "ALL SCHOOL BUS DRIVERS OF THE RESPONDENT IN KITCHENER, SAVE AND EXCEPT DISPATCHER, PERSONS ABOVE THE RANK OF DISPATCHER AND OFFICE STAFF." (46 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3992-73-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS PETERBOROUGH PLANT, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT WORKING AT ITS PETERBOROUGH PLANT, SAVE AND EXCEPT FOREMEN, SUPERVISORS, AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR." (6 EMPLOYEES IN THE UNIT).

UNIT #3: "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD WORKING AT OR OUT OF THE RESPONDENT'S PLANT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

4001-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. THE LAKEHEAD DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT THE CITY OF THUNDER BAY, SAVE AND EXCEPT SENIOR CLERK, PERSONS ABOVE THE RANK OF SENIOR CLERK, EXECUTIVE SECRETARIES, PSYCHOLOGIST, ATTENDANCE COUNSELLOR, ADMINISTRATIVE ASSISTANT, ASSESSMENT OFFICER, ASSESSMENT FIELD WORKERS, SENIOR ACCOUNTANT, TECHNICAL PERSONNEL, STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, EMPLOYEES ENGAGED TEMPORARILY UNDER PROVINCIALLY OR FEDERALLY-FUNDED WINTER WORKS PROGRAMMES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND SERVICE EMPLOYEES' UNION." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

4030-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. MIDWEST STORAGE & DISTRIBUTING COMPANY LTD. AND SEAWAY STORAGE (TORONTO) LIMITED, OPERATING AS SEAWAY MIDWEST DISTRIBUTION CENTRES (RESPONDENT).

- AND -

4127-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. MIDWEST STORAGE & DISTRIBUTING COMPANY LTD. AND SEAWAY STORAGE (TORONTO) LIMITED, OPERATING AS SEAWAY MIDWEST DISTRIBUTION CENTRES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF AND REGISTERED PHARMACISTS." (220 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4031-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 343 (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ELECTED AND APPOINTED OFFICERS OF THE RESPONDENT." (8 EMPLOYEES IN THE UNIT).

4045-73-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) v. DAYLESS MANUFACTURING (CANADA) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4055-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE VILLAGE OF PORT STANLEY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ROADS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND CLERICAL STAFF." (4 EMPLOYEES IN THE UNIT).

4074-73-R: RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254, OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (APPLICANT) v. GRADUATE STUDENTS' UNION AND GRADUATE STUDENTS' UNION CLUB, UNIVERSITY OF TORONTO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE RESPONDENT'S OPERATIONS AT THE UNIVERSITY OF TORONTO, SAVE AND EXCEPT EXECUTIVE

ASSISTANT AND PERSONS ABOVE THE RANK OF EXECUTIVE ASSISTANT." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4082-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. WINCHESTER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4087-73-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) V. HOLIDAY INN OF OSHAWA OF THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS INN AT OSHAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, (INCLUDING FRONT DESK CLERKS, FRONT DESK CASHIERS, PAY-ROLL CLERKS, ACCOUNTING CLERKS, AUDIT DEPARTMENT STAFF, SECRETARIES), SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (134 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4094-73-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. KENTWOOD NURSING HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PICTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

4108-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. VAN DRESSER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (81 EMPLOYEES IN THE UNIT).

4130-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

4131-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

4133-73-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (APPLICANT) V. VS SERVICES LTD. (FOOD MANAGEMENT SERVICES) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CIVIC CENTRE, LANSDOWNE PARK, OTTAWA-CARLETON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHEF AND OFFICE STAFF." (30 EMPLOYEES IN THE UNIT).

4135-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4136-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. NATIONAL CONCRETE DRILLING & RENTALS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED ON CONSTRUCTION PROJECTS IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4137-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. GENERAL CONCRETE DRILLING SERVICES (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED

ON CONSTRUCTION PROJECTS IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4151-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FELMAR FORMING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4154-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DRUG TRADING COMPANY LIMITED, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

4167-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. INGLIS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 324 HILTON DRIVE, STONEY CREEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4174-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

4180-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. REINFORCING STEEL SETTERS (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HOPE, SOUTH MONAGHAN, ALNWICK AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4181-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED ON THE PREMISES OF THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

4189-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION, TOWNSHIP OF WESTMEATH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT IN THE TOWNSHIP OF WESTMEATH, SAVE AND EXCEPT ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF." (5 EMPLOYEES IN THE UNIT).

4190-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. SAULT CENTURY MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SERVICE SALESMEN, PARTS WHOLESALE SALESMEN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

4195-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. THE NORFOLK HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SIMCOE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK OR STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

4196-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. THE NORFOLK HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSONNEL SECRETARY, THE SECRETARY TO THE ADMINISTRATOR AND THE SECRETARY TO THE ASSISTANT ADMINISTRATOR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.).

4200-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STONE & WEBSTER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN, AUGUSTA, AND EDWARDSBURGH AND ALL LANDS SOUTH THEREOF (THERE ARE THREE MUNICIPALITIES SOUTH OF THESE TOWNSHIPS: BROCKVILLE, PRESCOTT AND CARDINAL) IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4203-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. HADOVIC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4206-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. NEW IDEA SHEET METAL COMPANY LIMITED (RESPONDENT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 397 (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT AT CONSTRUCTION SITES IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND EMPLOYEES COVERED BY COLLECTIVE AGREEMENT BETWEEN THE LAKEHEAD SHEET METAL CONTRACTORS' ASSOCIATION AND THE INTERVENER." (2 EMPLOYEES IN THE UNIT).

4207-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 804 (APPLICANT) V. RALPH FORD ELECTRICAL CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

4208-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. EVANS CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4210-73-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. J. H. GRAHAME AND ASSOCIATES LIMITED (RESPONDENT) V. LOCAL UNION 2041 UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

4211-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. LOBLAW GROCETERIAS CO., LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

4212-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 446 (APPLICANT) V. STAR CONSTRUCTION AND LUMBER SUPPLY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4217-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. CANADIAN STEBBINS ENGINEERING & MFG. CO. LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4244-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 674 BRANTFORD, ONTARIO (APPLICANT) V. R. C. CRAFT LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT WELDERS WORKING AT THE PLUMBING AND STEAMFITTING TRADES ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.).

4247-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. JOHN NAWOLSKI, CONTRACTOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4254-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CENTURY MANOR (A JOINT VENTURE OF GARTH ASELFORD DEVELOPMENTS LIMITED, J. WALTON MARTIN DEVELOPMENTS LIMITED AND BRAHALEA CONSOLIDATED DEVELOPMENTS LIMITED) (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4258-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. J. B. CARROLL ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4259-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. MURHAN CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4260-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION ⁴⁴⁶ (APPLICANT) v. ACME BUILDING AND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

4268-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MARVO CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4278-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. MARTAN CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3699-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. SILVERWOOD DAIRIES, DIVISION OF SILVERWOOD INDUSTRIES LIMITED (RESPONDENT).

UNIT #1: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS HEAD OFFICE IN LONDON, SAVE AND EXCEPT ACCOUNTANTS, PERSONS ABOVE THE RANK OF ACCOUNTANT, SUPERVISORS, SALES PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS REGIONAL OFFICE IN LONDON, SAVE AND EXCEPT ACCOUNTANTS, PERSONS ABOVE THE RANK OF ACCOUNTANT, SUPERVISORS, SALES PERSONNEL, THE CONFIDENTIAL SECRETARY TO THE BRANCH MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (...THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN VOTING CONSTITUENCY #2 SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD. ...).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	35
NUMBER OF PERSONS WHO CAST BALLOTS	35
BALLOTS SEGREGATED AND NOT COUNTED	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

3741-73-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. YORK UNIVERSITY (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER).

UNIT: "ALL SECURITY OFFICERS IN THE DEPARTMENT OF SAFETY AND SECURITY SERVICES EMPLOYED TO PROTECT THE PROPERTY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2421-72-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OR OUT OF THE COMPANY'S SAND AND GRAVEL OPERATION AT CAYUGA IN THE COUNTY OF HALDIMAND, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES ENGAGED IN THE RESPONDENT'S ROAD BUILDING OPERATION INCLUDING LABOURERS AND PERSONS ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF THE SAME." (91 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	30
BALLOTS SEGREGATED AND NOT COUNTED	8
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

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3658-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF BARRIE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE PUBLIC WORKS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND TECHNICAL STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (68 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		60
NUMBER OF PERSONS WHO CAST BALLOTS	47	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	39	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

3730-73-R: LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE HYDRO ELECTRIC COMMISSION OF THE TOWN OF MISSISSAUGA (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT MANAGER, DIRECTOR OF MANPOWER DEVELOPMENT, EXECUTIVE DIRECTOR & TREASURER, DIRECTOR OF OPERATIONS, DIRECTOR OF ENGINEERING, INFORMATION SYSTEMS ADVISOR, CONSUMERS ENGINEER, PURCHASING AGENT, DESIGN ENGINEER, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, EMPLOYEES IN THE MANPOWER DEVELOPMENT DIVISION, PROGRAMMERS, COST & MATERIAL CO-ORDINATOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, ONE CONFIDENTIAL SECRETARY TO EACH OF THE FOLLOWING - MANAGER, EXECUTIVE DIRECTOR & TREASURER, DIRECTOR OF ENGINEERING, DIRECTOR OF OPERATIONS, INFORMATION SYSTEMS ADVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A COOPERATIVE BASIS WITH A UNIVERSITY OR A COLLEGE." (68 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		57
NUMBER OF PERSONS WHO CAST BALLOTS	55	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	45	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

3823-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT STRATHMERE LODGE AT STRATHROY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, ADJUVANT, CRAFT INSTRUCTOR, CHIEF CHEF, CHIEF ENGINEER, PURCHASING AGENT, STOCK-KEEPER AND OFFICE STAFF..." (51 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		49
NUMBER OF PERSONS WHO CAST BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

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3917-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. CO-OPERATIVE REGIONALE DE NIPISSING-SUDBURY LIMITED (RESPONDENT).

- AND -

3918-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. CO-OPERATIVE REGIONALE DE NIPISSING-SUDBURY LIMITED (RESPONDENT) EMPLOYEE (OBJECTORS).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICTS OF NIPISSING AND SUDBURY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN AND STORE MANAGERS AND PERSONS ABOVE THE RANK OF FOREMAN AND STORE MANAGER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

3930-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEST-VIEW HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN MARKHAM LODGE AT MARKHAM, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

3940-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. THE FRID CONSTRUCTION COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

3945-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. GLENDALE MOBILE HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TUCKERSMITH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

3994-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TRIL-
LIUM VILLA NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SARNIA, SAVE AND EXCEPT REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (84 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	85
NUMBER OF PERSONS WHO CAST BALLOTS	51
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18

4035-73-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE RUNNYMEDE HOSPITAL (RESPONDENT) V. ONTARIO PHYSIOTHERAPY ASSOCIATION, A BRANCH OF THE CANADIAN PHYSIOTHERAPY ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RUNNYMEDE HOSPITAL, AT TORONTO, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE AND UNDERGRADUATE NURSES, GRADUATE AND UNDERGRADUATE PHARMACISTS, TECHNICAL PERSONNEL AND STUDENTS TAKING COURSES WHICH LEAD TO SUCH POSITIONS, FOREMEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (72 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES TO THE EFFECT THAT WARD CLERKS ARE INCLUDED IN THE TERM "OFFICE STAFF" AND THAT REGISTERED PHYSIOTHERAPISTS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		71
NUMBER OF PERSONS WHO CAST BALLOTS	59	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	48	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

No Vote Conducted

1205-71-R: THE ONTARIO ERECTORS ASSOCIATION (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT) V. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #1) V. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #2) V. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #3) V. THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (INTERVENER #4) V. THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #6). (NO EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 444.

4003-73-R: GENERAL TRUCK DRIVERS LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DIRECT WINTERS TRANSPORT LIMITED (RESPONDENT). (19 EMPLOYEES).

[1973] 2 OLRB M.R. - PAGE 430.

4011-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. G. C. ROMANO & SONS (TORONTO) LTD., AND G. C. ROMANO
CONSTRUCTION LIMITED (RESPONDENT). (6 EMPLOYEES).

4068-73-R: FUEL, BUS, LINOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES,
LOCAL 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SUPERIOR
PROPANE LIMITED (RESPONDENT). (101 EMPLOYEES).

4123-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. PEMROW PIPELINES CONSTRUCTION COMPANY LIMITED (RESPONDENT).
(7 EMPLOYEES).

4134-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. PEMROW PIPELINES CONSTRUCTION CO. LTD. (RESPONDENT).
(3 EMPLOYEES).

4165-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA;
LOCAL UNION 446 (APPLICANT) V. KAROLA CONSTRUCTION (RESPONDENT). (7
EMPLOYEES).

4204-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 2679 (APPLICANT) V. CORONET FURNITURE COMPANY (RESPONDENT). (44
EMPLOYEES).

4261-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 446 (APPLICANT) V. STEPHENSON CONSTRUCTION COMPANY LIMITED
(RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

4063-73-R: UNITED RUBBER, CORK, LINOLEUM, AND PLASTIC WORKERS OF AMERICA,
AFL CIO CLC (APPLICANT) V. SEEBURN METAL PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BEAVERTON,
SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FORE-
MAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL
VACATION PERIOD." (144 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	135
NUMBER OF PERSONS WHO CAST BALLOTS	101
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	74

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3692-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. OLIVER PLUMBING AND HEATING COMPANY LIMITED (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 537 (INTERVENER).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN EAST ZORA, BLANDFORD, BLENHEIM, EAST OXFORD, NORTH NORWICH AND SOUTH NORWICH IN OXFORD COUNTY AND THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	5

3964-73-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 756 (APPLICANT) V. BARCLAY HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	21
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

4162-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. GARDINER'S OF GALT LIMITED (RESPONDENT). (2 EMPLOYEES).

4170-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES GLAZIERS & METAL MECHANICS, LOCAL UNION 114 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT). (5 EMPLOYEES).

4179-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION No. 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GENERAL MILLS CEREALS, LIMITED (RESPONDENT). (4 EMPLOYEES).

4192-73-R: HOTELS, CLUBS, RESTAURANTS & TAVERNS EMPLOYEES' UNION, LOCAL 261 (APPLICANT) V. SKYLINE HOTELS LTD., SKYLINE HOTEL, OTTAWA, 101 LYON STREET (RESPONDENT). (11 EMPLOYEES).

4193-73-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION (I.P.P. & A.U.) OF NORTH AMERICA, LOCAL N-1 (APPLICANT) V. GLOBE & MAIL PUBLISHING CO. LIMITED (RESPONDENT) V. TORONTO TYPOGRAPHICAL UNION No. 91 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (60 EMPLOYEES).

4201-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALPHA FORMING CORP. LTD. (RESPONDENT). (57 EMPLOYEES).

4202-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ROY CONSTRUCTION & SUPPLY COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (18 EMPLOYEES).

4231-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DU PONT OF CANADA LIMITED (RESPONDENT). (20 EMPLOYEES).

4273-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BATHE AND McLELLAN CONSTRUCTION (RESPONDENT). (2 EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING AUGUST

4147-73-R: BRIAN DENISON, BRUCE DENISON, MAT MOTA, NOEL TROTTIER (APPLICANTS) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT). (22 EMPLOYEES). (DISMISSED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

AUGUST

4053-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WENTWORTH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE WENTWORTH COUNTY BOARD OF EDUCATION, CARETAKING AND MAINTENANCE ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURINGAUGUST

4126-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES 'A' & 'B' ATTACHED HERETO (RESPONDENTS). (DISMISSED).

4138-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. GIUSEPPE STEFANUTO AND FRANCISCO SPERA (RESPONDENTS). (DISMISSED).

4168-73-U: KONVEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1450, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597, G. WILSON, D. URQUHART, D. GREENLEY, D. WATSON, R. FINNINGHAM AND G. MALONEY (RESPONDENTS). (WITHDRAWN).

4169-73-U: MOLLENHAUER LIMITED, CONTRACTORS & ENGINEERS (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1450, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597, G. WILSON, J. DUSTLER AND G. MALONEY (RESPONDENTS). (WITHDRAWN).

4219-73-U: GENERAL MILLS CEREALS, LIMITED (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL UNION No. 101 (RESPONDENT). (DISMISSED).

4249-73-U: GENERAL MILLS CEREALS, LIMITED (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL UNION No. 101 (RESPONDENT). (DISMISSED).

4284-73-U: BRAVO CEMENT CONTRACTING LIMITED (APPLICANT) V. HAMILTON OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION LOCAL 298 ET AL (RESPONDENTS). (WITHDRAWN).

4297-73-U: DIBCO UNDERGROUND LTD. (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793, A. VILLENEUVE, J. FONTAINE, W. JACK LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, M. REILLY (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

3936-73-U: CAYUGA MATERIALS & CONSTRUCTION Co. LIMITED (APPLICANT) V. MR. LEN SCHULTZ (RESPONDENT). (WITHDRAWN).

3937-73-U: CAYUGA MATERIALS & CONSTRUCTION Co. LIMITED (APPLICANT) V. TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (WITHDRAWN).

3969-73-U: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. ANDREW HALUSKA AND A. F. AMIS, LOCAL 598 OF

THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENTS). (WITHDRAWN).

4051-73-U: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND DISTRICT OF ALGOMA (RESPONDENT). (WITHDRAWN).

4139-73-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. REGAL STATIONERY COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

4140-73-U: C. A. McDOWELL LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493, MICHAEL ROSS, GORDON FRANCIS (RESPONDENTS). (WITHDRAWN).

4184-73-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LTD. (PETERBOROUGH) (RESPONDENT). (WITHDRAWN).

4185-73-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LTD. (PETERBOROUGH) (RESPONDENT). (WITHDRAWN).

4186-73-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. KAWARTHA BEVERAGES LTD. (PETERBOROUGH) (RESPONDENT). (WITHDRAWN).

4242-73-U: HOTEL & RESTAURANT EMPLOYEE'S AND BARTENDER'S UNION LOCAL 756 (APPLICANT) V. BARCLAY HOTEL (RESPONDENT). (DISMISSED).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

AUGUST

3606-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT).

- AND -

3757-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. BOARD OF GOVERNORS RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT). (DISMISSED).

3686-73-U: STANLEY DWYER (COMPLAINANT) V. UNITED AUTOMOBILE WORKERS, LOCAL 1285 AND KENNETH J. CALVER (RESPONDENTS). (DISMISSED).

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3695-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

- AND -

3696-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT). (DISMISSED).

[1973] 2 OLRB M.R. - PAGE 452.

3743-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. CORDS CANADA, LTD. (RESPONDENT). (GRANTED).

[1973] 2 OLRB M.R. - PAGE 429.

3835-73-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) V. HOSTESS FOOD PRODUCTS LIMITED (RESPONDENT). (DISMISSED).

3894-73-U: DANIEL CAPPADOCIA (COMPLAINANT) V. LOCAL 161 INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENT). (WITHDRAWN).

3935-73-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT). (DISMISSED).

[1972] 2 OLRB M.R. - PAGE 422.

3960-73-U: RAYMOND VAN EENOGHE (COMPLAINANT) V. HOWELL FORWARDING COMPANY LIMITED (RESPONDENT). (DISMISSED).

3990-73-U: MARY ANN NYKYFORUK (COMPLAINANT) V. ESSEX NURSING HOME (RESPONDENT). (WITHDRAWN).

4016-73-U: SERVICE EMPLOYEES UNION, LOCAL 210 A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. E. AND A. MANAGEMENT ENTERPRISES LIMITED CARRYING ON BUSINESS AS WINDSOR TELEPHONE ANSWERING SERVICE (RESPONDENT). (DISMISSED).

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4021-73-R: UNITED STEELWORKERS OF AMERICA, CLC (COMPLAINANT) V. ELGIN MOTORS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

4027-73-U: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (COMPLAINANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT). (WITHDRAWN).

4028-73-U: NURSES' ASSOCIATION PETERBOROUGH CIVIC HOSPITAL (COMPLAINANT) V. PETERBOROUGH CIVIC HOSPITAL (RESPONDENT). (WITHDRAWN).

4093-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1565 (COMPLAINANT) V. BARTON PLACE NURSING HOME (RESPONDENT). (WITHDRAWN).

4112-73-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KAWARTHA BEVERAGES LTD. (PETERBOROUGH) (RESPONDENT). (WITHDRAWN).

4124-73-U: FEDERATION OF CHILDREN'S AID STAFFS (COMPLAINANT) V. CHILDREN'S AID SOCIETY OF SAULT STE. MARIE AND DISTRICT OF ALGOMA (RESPONDENT). (WITHDRAWN).

4146-73-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. REGAL STATIONERY COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

4183-73-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. KAWARTHA BEVERAGES LTD. (PETERBOROUGH) (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 10 (RIGHT OF ACCESS)

4191-73-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SMITHS CONSTRUCTION COMPANY ARNPRIOR LIMITED (RESPONDENT). (GRANTED).

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APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING AUGUST

2221-72-R: WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (RESPONDENT) V. CESARONI BROTHERS (INTERVENER #1) V. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562 (INTERVENER #2) V. GAMBIN BROTHERS LIMITED (INTERVENER #3). (DISMISSED).

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3061-72-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1187 (APPLICANT) V. THE CORPORATION OF THE CITY OF KITCHENER (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 68 (INTERVENER #1) V. THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS LOCAL 304 (INTERVENER #2). (GRANTED).

UNIT #1: "ALL GAS AND WATER WORKERS OF THE RESPONDENT EMPLOYED IN ITS UTILITIES DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND CLERICAL STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

51

NUMBER OF PERSONS WHO CAST BALLOTS

44

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT - I.B.E.W.

30

NUMBER OF BALLOTS MARKED IN FAVOUR
OF INTERVENER #1 - C.U.P.E.

14

UNIT #2: "ALL MECHANICS AND SERVICEMEN IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND INSPECTORS."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		51
NUMBER OF PERSONS WHO CAST BALLOTS	42	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	27	

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

AUGUST

3896-73-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 87 (APPLICANT) V. THUNDER BAY PUBLIC LIBRARY BOARD (RESPONDENT).

4004-73-M: OTTAWA NEWSPAPER GUILD LOCAL 205 (APPLICANT) V. THE OTTAWA CITIZEN (A DIVISION OF SOUTHAM PRESS LIMITED) (RESPONDENT). (WITHDRAWN).

4005-73-M: SERVICE EMPLOYEES' UNION, LOCAL 268 (APPLICANT) V. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 81 (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 96

4148-73-M: (SEE SCHEDULE "A" ATTACHED) (EMPLOYERS) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 205 (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1322-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS 27, 666, 681, 1133, 1747, 1963, 3227, 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER). (REQUEST DENIED)

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2774-72-R: NURSES' ASSOCIATION LEAMINGTON DISTRICT MEMORIAL HOSPITAL (APPLICANT) V. LEAMINGTON DISTRICT MEMORIAL HOSPITAL (RESPONDENT). (REQUEST DENIED).

3807-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

3686-73-U: STANLEY DWYER (COMPLAINANT) V. UNITED AUTOMOBILE WORKERS, LOCAL 1285 AND KENNETH J. CALVER (RESPONDENTS). (REQUEST DENIED).

1973) OLRB REP.

SEPTEMBER

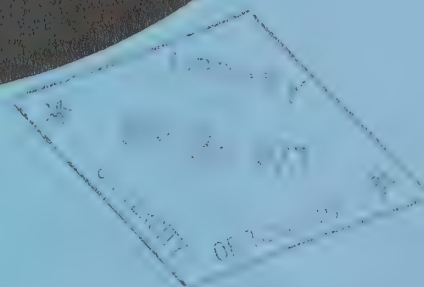
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Monthly Report



ONTARIO LABOUR RELATIONS BOARD

CAGWLR
1957

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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TRADE UNION - S1(1)(N) - EFFECT OF A COUNCIL OF TRADE UNIONS
APPLYING FOR CERTIFICATION - EFFECT OF SECTION OF THE ACT -
S1(1)(D) - WHETHER THE APPLICANT A CERTIFIED COUNCIL.

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TRADE UNION - S1(1)(N) - EFFECT OF DETERMINING THE IDENTITY OF A
TRADE UNION INSTEAD OF ITS STATUS - WHETHER A "TEMPORARY
COMMITTEE" CAN DISCHARGE THE FUNCTIONS OF A TRADE UNION
UNTIL A PERMANENT EXECUTIVE IS ELECTED - WHETHER THE BOARD
WILL RECONSIDER ITS DECISION GRANTING THE APPLICANT ITS
STATUS.

CANADIAN UNION OF INDUSTRIAL EMPLOYEES v. THE GOLD CREST
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TRADE UNION - S1(1)(N) - WHETHER THE BOARD WILL RECONSIDER A
FINDING WITH RESPECT TO TRADE UNION STATUS - EFFECT OF
OFFICERS ELECTED IN ACCORDANCE TO THE CONSTITUTION OR OTHER-
WISE AUTHORIZED.

CANADIAN UNION OF INDUSTRIAL EMPLOYEES v. THE GOLD CREST
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FORT FRANCES CLINIC HOLDINGS LIMITED

5. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF FORT FRANCES CLINIC HOLDINGS LIMITED, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FINDS THAT THE CARETAKER WHOSE DUTIES AND RESPONSIBILITIES INCLUDE CLEANING THE OFFICE IS PROPERLY INCLUDED IN THE AFORESAID BARGAINING UNIT.

7. THE ONLY REMAINING EMPLOYEE OF FORT FRANCES CLINIC HOLDINGS LIMITED IS A LAUNDRESS WHO WAS INVOLVED IN THE CLEANING OF UNIFORMS WORN BY OFFICE EMPLOYEES, AND OTHER RELATED MATTERS. IT HAS BEEN THE BOARD'S PRACTICE WHERE THERE IS ONE REMAINING EMPLOYEE AT THE DATE OF THE MAKING OF THE APPLICATION WHO MAY NOT, STRICTLY SPEAKING, FALL INTO THE BARGAINING UNIT AND WHO THEREFORE WOULD BE DENIED COLLECTIVE BARGAINING AND THE RIGHT TO REPRESENTATION BY REASON OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT SUCH AN EMPLOYEE, IF THAT EMPLOYEE IS A MEMBER OF THE TRADE UNION SEEKING CERTIFICATION, BE INCLUDED IN THE BARGAINING UNIT. ACCORDINGLY, THE BOARD DETERMINES THAT LILLIAN McINTOSH, LAUNDRESS, IS INCLUDED IN THE AFORESAID BARGAINING UNIT.

. . .

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 5 ABOVE.

FORT FRANCES CLINIC

11. ACCORDING TO THE SUBMISSIONS OF THE PARTIES IT APPEARS THAT THERE ARE NINE EMPLOYEES EMPLOYED BY FORT FRANCES CLINIC WHO WORK IN THE OFFICES OF INDIVIDUAL DOCTORS AND IN THE MAIN ARE SUPERVISED BY THOSE DOCTORS. THEY ARE ALL REGISTERED NURSING ASSISTANTS AND SOME ARE EMPLOYED BY FORT FRANCES CLINIC. THEIR WORK IS MORE SPECIALIZED THAN THE NORMAL OFFICE EMPLOYEE WHO MIGHT WORK FOR A DOCTOR, IN THAT THEY APPLY THEIR REGISTERED NURSING TRAINING TO THE SERVICES THEY PERFORM. THAT IS NOT TO SAY THAT INCLUDED IN THEIR WORK IS NOT SOME MINOR OFFICE WORK. THE BOARD WAS ADVISED, HOWEVER, THAT THE BULK OF THE OFFICE WORK WAS PERFORMED BY THE PERSONS WHO ARE EMPLOYED BY FORT FRANCES CLINIC HOLDINGS LIMITED.

12. APART FROM THESE REGISTERED NURSING ASSISTANTS THERE ARE NO OTHER EMPLOYEES OF FORT FRANCES CLINIC. THE BOARD WISHES TO NOTE THAT THIS IS NOT THE TYPE OF SITUATION THAT ARISES IN CONNECTION WITH REGISTERED NURSING ASSISTANTS WHO ARE EMPLOYED BY HOSPITALS. ACCORDINGLY, IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE NATURE OF THE OPERATION

AND TO THE REPRESENTATIONS THAT THESE PERSONS ARE THE ONLY PERSONS EMPLOYED BY FORT FRANCES CLINIC, WE DO NOT DEEM IT APPROPRIATE TO DESCRIBE THE BARGAINING UNIT AS AN "ALL REGISTERED NURSING ASSISTANT'S" UNIT. ACCORDINGLY, THE BOARD FINDS THAT ALL EMPLOYEES OF FORT FRANCES CLINIC, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 12 ABOVE.

3948-73-R: BRUCE REID (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT).

[RE: NORTH AMERICAN STEEL CO. LTD.]

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. C. VICTOR FOR THE APPLICANT; P. G. KENNEDY, G. TAYLOR AND M. BARKO FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER F. W. MURRAY: SEPTEMBER 4, 1973.

. . .

2. THIS IS AN APPLICATION FILED UNDER THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. THERE WAS FILED IN THESE PROCEEDINGS A TYPEWRITTEN DOCUMENT BEARING THE SIGNATURES OF NINE PERSONS PURPORTING TO BE EMPLOYEES OF THE EMPLOYER, HEREINAFTER REFERRED TO AS PETITION #1. HAVING CAREFULLY REVIEWED THE EVIDENCE AS ADDUCED FROM BRUCE REID IN THIS REGARD, WE ARE SATISFIED THAT THIS DOCUMENT DOES REFLECT A VOLUNTARY STATEMENT OF THE DESIRES OF THE SIGNATORIES THERETO.

4. THE EVIDENCE FURTHER DISCLOSES, HOWEVER, THAT WHEN BRUCE REID SUBSEQUENTLY PRESENTED PETITION #1 TO HIS SOLICITOR, MR. VICTOR, THE LATTER WAS OF THE OPINION THAT THE DOCUMENT WAS "PRETENTIOUS" AND ACCORDINGLY PROCEEDED TO DRAFT A MORE FORMAL DOCUMENT (HEREINAFTER REFERRED TO AS PETITION #2) FOR PRESENTATION TO THE BOARD.

5. IN THIS REGARD, MR. VICTOR TESTIFIED THAT HE THEN ARRANGED WITH BRUCE REID TO PERSONALLY ATTEND AT THE PLANT DURING THE LUNCH HOUR ON JUNE 12, 1973, WHEREUPON MR. VICTOR PROCEEDED TO OBTAIN SIGNATURES FROM

THE EMPLOYEES ON PETITION #2 WHO INDIVIDUALLY ATTENDED BEFORE HIM IN THE PRODUCTION OFFICE.

6. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT MR. VICTOR'S ACTIVE PARTICIPATION IN THE CIRCULATION OF PETITION #2, DID NOT, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, CONSTITUTE INTIMIDATION OF THE EMPLOYEES CONCERNED, AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. FURTHER, JUST AS THE BOARD IN THE PAST HAS SCRUTINIZED A PRIOR "TAINTED" PETITION IN NULLIFYING THE EFFECT OF A SUBSEQUENT RELATED PETITION, WE SEE NO REASON WHY IN THE CIRCUMSTANCES OF THIS CASE, WE CANNOT, IN ASSESSING THE TOTALITY OF THE EVIDENCE, TAKE INTO ACCOUNT THE CORROBORATIVE EFFECT OF A VALID PRIOR PETITION UPON A SUBSEQUENT RELATED PETITION. IN THE RESULT, THEREFORE WE ARE SATISFIED THAT PETITION #2 DOES REPRESENT A VOLUNTARY EXPRESSION OF THE DESIRES OF THE SIGNATORIES THERETO.

7. ACCORDINGLY, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF NORTH AMERICAN STEEL EQUIPMENT COMPANY LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JUNE 22ND, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT.

. . .

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 4, 1973.

IN THIS CASE THE EVIDENCE OF SIGNIFICATION BY THE EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION WAS PROCURED IN A MOST UNUSUAL MANNER. CONSIDERING THAT THE BOARD MUST LOOK TO THE FACTORS OF ORIGATION, PREPARATION AND CIRCULATION OF THE DOCUMENTARY EVIDENCE BY WHICH THE SIGNIFICATION OF EMPLOYEES IS ESTABLISHED, IT IS MY VIEW THAT THE CIRCULATION, HAVING BEEN ACCOMPLISHED IN AN OFFICE ON THE PREMISES OF THE EMPLOYER DURING A NOON LUNCH PERIOD, WOULD DESTROY THE VOLUNTARY NATURE OF THE EXPRESSION OF THE EMPLOYEES WHICH IS SAID BY THE APPLICANT TO REPRESENT. NOT ONLY THE QUESTION OF PLACE, TIME AND MANNER OF SECURING THE SIGNATURES IS QUESTIONABLE; THE SIGNATURES WERE WITNESSED BY COUNSEL AND NOT BY ANY OF THE EMPLOYEES. EACH EMPLOYEE SIGNED SEPARATELY AND ALONE IN THE PRESENCE OF COUNSEL. TO ALLOW THIS AS AN ACCEPTABLE PROCEDURE APPEARS TO ME AS AN INVITATION TO DEVELOP A FORMALIZED AND HIGHLY ORGANIZED METHOD BY WHICH EMPLOYEES CAN BE INTIMIDATED AND INFLUENCED TOWARD TERMINATING BARGAINING RIGHTS. EVEN THOUGH THERE IS NO EVIDENCE OF ACTUAL COLLABORATION OR INFLUENCE

BY MANAGEMENT, THE FLAVOUR OF MANAGEMENT SUPPORT IS PRESENT IN THE SETTING OF THIS CASE.

THEREFORE, CONSIDERING ALL OF THE EVIDENCE AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I FIND THE SIGNIFICATION OF THE EMPLOYEES NOT A VOLUNTARY EXPRESSION AND IN THE RESULT, DISMISS THE APPLICATION.

3836-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 AFL-CIO-CLC (APPLICANT) V. WINDSOR TELEPHONE ANSWERING SERVICE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. WOHL AND B. JANISSE FOR THE APPLICANT; P. MCCULLOCH AND F. ROMIENS FOR THE RESPONDENT; L. HUEBERT AND D. COLE FOR THE OBJECTORS.

DECISION OF THE BOARD:

SEPTEMBER 4, 1973.

1. BY A DECISION DATED JUNE 14, 1973, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE ON A BARGAINING UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

2. UPON INSTRUCTIONS FROM THE REGISTRAR, REPRESENTATIVES OF THE PARTIES MET AND MADE ARRANGEMENTS FOR THE CONDUCT OF THE VOTE AND SO ADVISED THE REGISTRAR OF THE ARRANGEMENTS. COPIES OF THE NOTICE OF THE TAKING OF VOTE (FORM 42) DATED JUNE 25, 1973, UNDER THE SIGNATURE OF THE REGISTRAR, WERE POSTED ON THE PREMISES OF THE RESPONDENT. BY THE NOTICE, THE EMPLOYEES CONCERNED WERE ADVISED OF THE TIME AND PLACE THAT THEY COULD CAST THEIR BALLOTS ON JULY 5, 1973. THE NOTICE CONCERNED THE FOLLOWING STATEMENT WITH RESPECT TO ELECTIONEERING: "I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MID-NIGHT OF SUNDAY, THE 1ST DAY OF JULY, 1973 UNTIL THE VOTE IS TAKEN."

3. THE RESULT OF THE VOTE TAKEN ON JULY 5, 1973 WAS THAT 19 BALLOTS WERE CAST AND OF THAT NUMBER 10 WERE CAST IN FAVOUR OF THE APPLICANT UNION AND 9 WERE CAST AGAINST THE APPLICANT UNION. SUBSEQUENT TO THE TAKING OF THE VOTE, BUT WITHIN THE TIME PERIOD FOR MAKING OBJECTIONS AND THE VOTE, THE BOARD RECEIVED TWO LETTERS FROM PERSONS IN THE BARGAINING UNIT ALLEGING A VIOLATION OF THE "NO PROPAGANDA PERIOD" BY THE APPLICANT. MORE PARTICULARLY IT WAS ALLEGED THAT THE APPLICANT MAILED A PROPAGANDA LEAFLET TO EMPLOYEES DATED JUNE 28, 1973, BUT POSTMARKED FRIDAY JUNE 29, 1973, WHICH WAS NOT AND COULD NOT HAVE BEEN RECEIVED BY THE EMPLOYEES UNTIL JULY 3, 1973, HAVING REGARD TO THE FACT THAT THERE WAS NO MAIL DELIVERY ON THE FOLLOWING SATURDAY, SUNDAY AND MONDAY, JUNE 30, JULY 1 AND 2, THE LATTER DAY BEING A STATUTORY HOLIDAY.

4. THE BOARD ACCORDINGLY LISTED THE MATTER FOR HEARING IN WINDSOR ON AUGUST 20, 1973 TO INQUIRE INTO THE ALLEGATIONS OF THE ALLEGED VIOLATION BY THE APPLICANT OF THE "NO PROPAGANDA" PERIOD PRECEDING THE VOTE HELD ON JULY 5, 1973.

5. THE EVIDENCE ADDUCED AT THE HEARING IS AS FOLLOWS. THE BUSINESS REPRESENTATIVE OF THE APPLICANT, BRUCE JANISSE INSTRUCTED HIS SECRETARY TO MAIL A PROPAGANDA LEAFLET DATED JUNE 25, 1973, TO THE MEMBERS OF THE BARGAINING UNIT FOR WHOM HE HAD ADDRESSES. HIS INSTRUCTIONS WERE THAT THE LEAFLETS WERE TO BE MAILED NO LATER THAN 5:00 P.M. ON JUNE 28, 1973. JANISSE TESTIFIED THAT HE WAS UNDER THE IMPRESSION THAT ALL MAIL ADDRESSED TO PERSONS IN THE WINDSOR AREA WHICH WAS MAILED PRIOR TO 5:30 P.M. WAS PICKED UP ON THE SAME DAY AND IN THE NORMAL COURSE WOULD BE DELIVERED TO THE ADDRESSES THE FOLLOWING DAY WHICH WAS JUNE 29, 1973. THE UNDISPUTED EVIDENCE IS THAT IN THE CASE OF SOME MAIL BOXES WHICH ARE SPECIALLY MARKED, THE MAIL IS PICKED UP AT 5:30 P.M. AND DELIVERY CAN BE EXPECTED THE FOLLOWING DAY. BESS STETSON, A SECRETARY IN THE OFFICE OF THE APPLICANT TESTIFIED THAT FOLLOWING JANISSE INSTRUCTIONS SHE MAILED THE LEAFLETS AT APPROXIMATELY 4:40 P.M. ON JUNE 28, 1973. THE MAIL BOX INTO WHICH SHE DEPOSITED THE LETTERS, HOWEVER, HAPPENED TO BE A REGULAR MAIL BOX, THE MAIL FROM WHICH IS ONLY PICKED UP AT 11:00 A.M. THE FOLLOWING DAY. WHEN SHE MAILED THE LETTERS SHE DID NOT CHECK TO SEE WHAT TIME THE MAIL WOULD BE PICKED UP. JANISSE ALSO HAD NOT CHECKED WITH THE POST OFFICE AND LEARNED OF THE DISTINCTION BETWEEN THE TWO TYPES OF MAIL BOXES.

6. WE ARE SATISFIED THAT THE FACT THAT THE LEAFLETS WERE RECEIVED BY THE ADDRESSEES ON JULY 3, 1973, WHICH WAS AN ADMITTED FACT, WAS NOT INTENTIONAL ON THE PART OF THE APPLICANT, BUT RESULTED FROM INADVERTANCE ON THE PART OF THE APPLICANT WHICH AROSE OUT OF JANISSE'S FAILURE TO LEARN OF THE DISTINCTION BETWEEN THE TWO TYPES OF MAIL BOXES AND THEIR DIFFERING TIMES AS TO MAIL PICK-UP. AS THINGS HAPPENED HIS SECRETARY HAPPENED TO DEPOSIT THE LETTERS IN A MAIL BOX WITH THE PICK UP TIME THE NEXT DAY.

7. IN MATTERS RELATING TO WHETHER A SECOND REPRESENTATION VOTE SHOULD BE DIRECTED IN CIRCUMSTANCES WHERE THE REGISTRAR'S DIRECTION WITH RESPECT OF THE SILENT PERIOD IS VIOLATED, THE BOARD MUST ASCERTAIN WHETHER ALL REASONABLE PRECAUTIONS WERE TAKEN TO AVOID THE BREACH. IN SUCH INSTANCES, THERE IS NO ABSOLUTE PROHIBITION WHICH WILL VITIATE A REPRESENTATION VOTE, BUT RATHER THERE IS A HEAVY ONUS ON THE PARTIES TO SEE THAT THE PROHIBITION IS NOT INFRINGED. (SEE; AUTOMATIC ELECTRIC CASE 61 CLLC ¶16,226; WATERLOO COUNTY HEALTH ASSOCIATION CASE OLRB M.R. MAY 1965 121).

8. IN CASES INVOLVING MAILED PROPAGANDA WHERE ALLEGATIONS OF VIOLATION OF THE SILENT PERIOD ARE MADE THIS BOARD HAS VIEWED WITH SOME LENIENCY CORRESPONDENCE MAILED PRIOR TO THE ONSET OF THE SILENT PERIOD BUT BECAUSE OF SHORTCOMINGS IN THE DELIVERY OF THE MAIL THE REGISTRAR'S DIRECTION HAS BEEN COMPROMISED. IN SUCH INSTANCES, THE BOARD USUALLY

REQUIRES FIRST HAND EVIDENCE THAT ASSURANCES WERE OBTAINED FROM THE APPROPRIATE POSTAL AUTHORITIES THAT THE PROPAGANDA WOULD ARRIVE ON TIME. IN BRIEF, FAILURE TO ADHERE TO THE REGISTRAR'S DIRECTION MAY REASONABLY BE ATTRIBUTED TO CIRCUMSTANCES BEYOND THE CONTROL OF THE PARTY. [SEE; KOMOKA NURSING HOMES LIMITED CASE [1972] OLRB M.R. JANUARY 28); KRALINATOR FILTERS LIMITED CASE OLRB M.R. AUGUST 1966 312; WATERLOO COUNTY HEALTH ASSOCIATION CASE (SUPRA)].

9. IN THE CIRCUMSTANCES BEFORE US, THIS BOARD CANNOT CONCLUDE THAT THE APPLICANT HAS DISCHARGED THE "HEAVY ONUS" PLACED UPON IT. ALTHOUGH THE VIOLATION OF THE NO PROPAGANDA PERIOD WAS NOT INTENTIONAL, NEVERTHELESS THIS BOARD IS SATISFIED THAT THE VIOLATION COULD HAVE BEEN AVOIDED HAD MORE CARE BEEN EXHIBITED IN OBTAINING ASSURANCES THAT THE PROPAGANDA WOULD ARRIVE IN TIME. THE APPLICANT'S BUSINESS AGENT WAS UNDER THE WRONGFUL IMPRESSION THAT MAIL DELIVERED IN THE WINDSOR AREA WOULD AUTOMATICALLY ARRIVE ON A CERTAIN DAY. NO EVIDENCE WAS LED TO INDICATE THE STEPS TAKEN TO CORROBORATE THIS IMPRESSION. FURTHERMORE IT IS REASONABLY FORESEEABLE THAT THE MOST PERFUNCTORY INVESTIGATION WOULD HAVE REVEALED THE NATURE OF THE MAIL DELIVERY SYSTEM IN THE WINDSOR AREA. HAD THIS INVESTIGATION BEEN PURSUED THEN THE APPROPRIATE INSTRUCTIONS COULD HAVE BEEN GIVEN THE APPLICANT'S SECRETARY. (SEE THE INTERNATIONAL NICKEL COMPANY LIMITED CASE 62 CLLC ¶16,257).

10. THEREFORE HAVING REGARD TO THE CIRCUMSTANCES OF THIS CASE, THIS BOARD ORDERS A SECOND REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT SET OUT IN THE BOARD'S ORIGINAL DECISION DATED JUNE 14, 1973. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

3934-73-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, A.F.L., C.I.O., CLC. (COMPLAINANT) v. MUSKOKA DISTRICT HOME FOR THE AGED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: B.A. DUNN FOR THE APPLICANT; A.R. BLACK FOR THE RESPONDENT.

DECISION OF THE BOARD:

SEPTEMBER 6, 1973.

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2. IN THIS CASE THE COMPLAINANT ALLEGES THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY AND REQUESTS THAT SHE BE REINSTATED WITH FULL COMPENSATION. THE FACTS ARE AS FOLLOWS: THE GRIEVOR HAD BEEN EMPLOYED BY THE RESPONDENT COMPANY FOR SLIGHTLY LESS THAN TWO YEARS. SHE ADMITTEDLY WAS A GOOD EMPLOYEE. IN FEBRUARY 1973, THE UNION COMMENCED TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AND ADVISED THE EMPLOYER THAT IT WAS, IN FACT, ORGANIZING THE EMPLOYEES.

3. AT THAT TIME THE DISTRICT OF MUSKOKA WAS GOING THROUGH A MUNICIPAL REORGANIZATION AND AS A RESULT THE ANNUAL INCREMENT WHICH WAS USUALLY PAID AT THE BEGINNING OF JANUARY, WAS DELAYED BECAUSE OF AN OVERALL ATTEMPT TO CO-ORDINATE THE POLICIES FOR THE WHOLE DISTRICT.

4. ON MAY 31, 1973, THE GRIEVOR WAS DISCHARGED BECAUSE SHE FAILED TO NOTIFY THE RESPONDENT COMPANY THAT SHE WOULD NOT BE AT WORK FOR THE MIDNIGHT SHIFT WHICH COMMENCED ON MAY 29TH. THE GRIEVOR WAS ILL AND ON MAY 29TH HAD BEEN TO THE DOCTOR WHO ADVISED HER NOT TO REPORT FOR WORK THAT DAY. SHE RETURNED HOME AND FOUND THAT HER TELEPHONE WAS OUT OF ORDER. IT WAS NOT FIXED UNTIL THE NEXT DAY. THE NEXT TWO DAYS WERE HER DAYS OFF AND SHE DID NOT ADVISE THE RESPONDENT OF HER ILLNESS OR WHEN SHE MIGHT RETURN. SHE DID RETURN ON JUNE 1, 1973.

5. THE COMPANY DISCHARGED THE GRIEVOR FOR BREACH OF THE COMPANY'S RULES WHICH REQUIRE THE GRIEVOR TO ADVISE THE COMPANY OF THE REASONS FOR HER ABSENCE AS SOON AS POSSIBLE OR WITHIN FORTY-EIGHT HOURS.

6. IN THE REPLY TO THE COMPLAINT AND AT THE HEARING IT WAS ALSO ARGUED THAT THE GRIEVOR'S ATTENDANCE RECORD MADE HER UNACCEPTABLE FOR THE POSITION.

7. WE FIND, AS ADMITTED, THAT THE GRIEVOR WAS A GOOD EMPLOYEE. WE ALSO FIND FROM THE EVIDENCE ADDUCED BY THE EMPLOYER THAT THE GRIEVOR'S ATTENDANCE RECORD PLAYED NO PART IN HER DISMISSAL, AND WE FURTHER FIND THAT HER ATTENDANCE RECORD WAS WITHIN THE LIMITS IMPOSED BY THE EMPLOYER. THE GRIEVOR WAS PERMITTED A TOTAL OF EIGHTEEN DAYS ABSENCE FOR THE YEAR, AND THE EVIDENCE INDICATES THAT SHE WAS ONLY ABSENT FOR TEN DAYS WITHIN THE PAST YEAR. IN ADDITION, THERE WERE OTHER EMPLOYEES WHO WERE ABSENT FOR LONGER PERIODS AND THERE IS NO EVIDENCE THAT THE GRIEVOR HAD EVER BEEN SPOKEN TO WITH RESPECT TO HER ATTENDANCE. WITH RESPECT TO THE ALLEGATION BY THE EMPLOYER THAT THE GRIEVOR'S ATTENDANCE MADE HER UNSUITABLE, WE FIND THAT THAT IS NOT THE CASE AND THE DEFENSE TO THE COMPLAINT IN THAT REGARD CANNOT SUCCEED.

8. COUNSEL FOR THE UNION SUBMITS THAT THE BOARD SHOULD DRAW AN INFERENCE FROM THE FACTS THAT THE DISCHARGE WAS UNDULY HARSH IN THE CIRCUMSTANCES AND WAS MOTIVATED BY UNION ACTIVITY. HE ALSO SUBMITS THAT THE DELAY IN THE ANNUAL INCREMENT AROSE BECAUSE THE EMPLOYER INTENDED TO HOLD BACK PAYMENTS AS AN INDICATION THAT IT MIGHT PENALIZE THE EMPLOYEES IF THEY BECAME MEMBERS OF THE UNION.

9. WE FIND THAT THE DELAY IN PAYING THE ANNUAL INCREMENT AROSE BECAUSE OF A REORGANIZATION OF THE DISTRICT OF MUSKOKA, AND WAS ATTRIBUTABLE TO THE NORMAL DELAYS THAT ONE COULD EXPECT WHERE THERE IS A RECONSTITUTION OF A MUNICIPAL GOVERNMENT. THE SUGGESTION OF ANTI-UNION ACTIVITY IS ALSO MITIGATED BY THE RESPONDENT PERMITTING THE UNION TO POST NOTICES OF ITS ORGANIZATIONAL CAMPAIGN ON THE EMPLOYER'S BULLETIN BOARDS. ACCORDINGLY, WE ARE NOT PREPARED TO DRAW THE INFERENCE THAT THE EMPLOYER HAD AN ANTI-UNION ANIMUS.

10. THERE ALSO APPEARS TO BE A LACK OF EVIDENCE AS TO THE NATURE, IF ANY, OF THE GRIEVOR'S UNION ACTIVITY. WHILE THE GRIEVOR APPEARS TO HAVE SUPPORTED THE UNION, THERE IS LITTLE, IF ANY, EVIDENCE TO INDICATE THAT THERE WAS ANY OVERT ACTIVITY ON HER PART TO ASSIST THE UNION. FURTHER, THE EMPLOYER KNEW OF THE UNION'S ORGANIZATIONAL CAMPAIGN IN FEBRUARY AND THERE APPEARS TO BE NO PLAUSIBLE EXPLANATION AS TO WHY THE EMPLOYER WOULD WAIT UNTIL THE LATTER PART OF MAY TO DISCHARGE THE GRIEVOR WHOSE UNION ACTIVITY, IF ANY, SEEMS TO BE RATHER LIMITED. IN THESE CIRCUMSTANCES THERE APPEARS TO BE A LACK OF UNION MOTIVE IN THE EMPLOYER SELECTING THE GRIEVOR FOR DISCHARGE.

11. THE ONLY PLAUSIBLE ARGUMENT MADE ON THE COMPLAINANT'S BEHALF IS THE CIRCUMSTANCES SURROUNDING THE ACTUAL DISCHARGE OF AN ADMITTEDLY GOOD EMPLOYEE, AND AN EMPLOYEE WHO HAD CONSIDERABLE EXPERIENCE WITH RESPECT TO THE WORK REQUIRED BY THE EMPLOYER.

12. IN ZEHR'S MARKETS LIMITED (1971) OLRB REPS. 39, THE BOARD STATED AT PP. 42 AND 43:

"...IT IS A RARE CASE WHERE AN EMPLOYER OPENLY ANNOUNCES THAT A DISCHARGE IS FOR REASONS CONTRARY TO THE LABOUR RELATIONS ACT.

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IN CASES SUCH AS THIS, THE BOARD MUST DETERMINE THE REAL REASON FOR THE DISCHARGE AND THIS IS NOT NECESSARILY THE SAME AS THE REASON ANNOUNCED BY THE EMPLOYER AT THE TIME OF DISCHARGE. WHEN DETERMINING THE BONA FIDES OF THE REASONS ANNOUNCED BY THE EMPLOYER, IT IS HELPFUL TO ASSESS THE REASONABLENESS OF THE EMPLOYER'S ACTIONS IN LIGHT OF ALL THE CIRCUMSTANCES. IF THE EMPLOYER'S ACTIONS ARE UNREASONABLE OR UNDULY MARSH AND IT IS ESTABLISHED, AS IN THIS CASE, THAT THE EMPLOYER HAD KNOWLEDGE OF THE UNION ACTIVITY WHICH HE OPPOSED, THE FACT THAT THE EMPLOYER'S ACTIONS WERE UNREASONABLE

OR UNDULY HARSH WOULD CAST SERIOUS DOUBT ON THE VALIDITY OF THE REASONS ADVANCED BY THE EMPLOYER FOR THE DISCHARGE."

13. THE UNION SUBMITS THAT DISCHARGE WAS UNDULY HARSH, AND WHILE IT DOES APPEAR THAT DISCHARGE MAY HAVE BEEN EXTREME, CONSIDERING THAT THE GRIEVOR WAS ILL AND THAT HER TELEPHONE WAS OUT OF ORDER, WE ARE NOT PREPARED TO FIND THAT IN ALL THE CIRCUMSTANCES THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY. THERE IS NOTHING ELSE IN THE EVIDENCE WHICH WOULD ENABLE US TO DRAW AN INFERENCE THAT THE DISCHARGE WAS MOTIVATED BY UNION ACTIVITY. THE BOARD'S AUTHORITY IS LIMITED TO CASES WHERE THE EMPLOYEE WAS DISCHARGED FOR UNION ACTIVITY. THE BOARD CANNOT DECIDE QUESTIONS OF JUST CAUSE. THE RESPONDENT HAS INDICATED THAT THE NATURE OF THE HOME, WHICH INCLUDES AMONG ITS PATIENTS PERSONS WHO REQUIRE CONSTANT CARE, NECESSITATES THAT THERE BE SUFFICIENT COVERAGE FOR PATIENTS, AND THAT EMPLOYEES PHONE IN TO ENABLE THE EMPLOYER TO ORGANIZE PATIENT COVERAGE. THE EVIDENCE INDICATED THAT ON ANOTHER OCCASION THE SAME PENALTY WAS INVOKED WITH RESPECT TO A NURSE WHO ALSO FAILED TO REPORT. IN THE CIRCUMSTANCES OF THIS CASE WE FIND THE EXPLANATION GIVEN BY THE EMPLOYER TO BEAR THE MARK OF CREDIBILITY, AND ACCORDINGLY WE ARE NOT PREPARED TO FIND THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY.

14. ACCORDINGLY THE COMPLAINT IS DISMISSED.

4089-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) v. NORONT CONSTRUCTION AND MAINTENANCE (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD: SEPTEMBER 7, 1973.

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5. THE APPLICANT IS APPLYING FOR CERTIFICATION WITH RESPECT TO A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS:

"ALL MILLWRIGHTS AND THEIR APPRENTICES IN THE EMPLOY OF THE EMPLOYER SAVE AND EXCEPT ALL THOSE ABOVE THE RANK OF FOREMAN IN THE TOWNSHIP OF STRATHY AND STRATHCONA. (35 MILES RADIUS OF TIMAGAMI)"

6. THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THIS APPLICATION, THE RESPONDENT EMPLOYED ONLY ONE PERSON WHO WOULD BE INCLUDED IN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. THE BOARD FURTHER FINDS THAT MR. LEO ST. JEAN WAS ALSO EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION AS A FOREMAN WHO

EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

7. HAVING REGARD TO ALL THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THERE IS ONLY ONE PERSON, MR. DENIS CHAMPAYNE, WHO WOULD BE INCLUDED IN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING BARGAINING RIGHTS.

8. HAVING FURTHER REGARD TO THE FOREGOING AND TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, IT FOLLOWS THAT THERE IS NO UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

9. IN THE RESULT, THIS APPLICATION IS DISMISSED.

3861-73-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. YORK UNIVERSITY (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #2).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND J.D. BELL.

DECISION OF THE BOARD: SEPTEMBER 10, 1973.

1. IN THIS MATTER THE APPLICANT IS SEEKING TO REPRESENT TWO PERSONS WHOM IT CLAIMS TO BE SECURITY GUARDS WITHIN THE MEANING OF SECTION 11 OF THE LABOUR RELATIONS ACT. IT IS ADMITTED THAT THE APPLICANT IS CAPABLE OF REPRESENTING ONLY THOSE PERSONS WHO ARE EMPLOYED AS GUARDS WITHIN THE MEANING OF THE ACT.

2. AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE TWO PERSONS, AND AFTER CONSIDERING THE REPORT OF THE EXAMINER WE ARE OF THE OPINION THAT THE TWO PERSONS CLAIMED BY THE APPLICANT ARE NOT GUARDS WITHIN THE MEANING OF THE ACT, BUT ARE MERELY INSPECTORS WHOSE FUNCTION IS TO INSPECT EQUIPMENT AND BUILDINGS AND TEST FIRE ALARM EQUIPMENT AND RELATED EQUIPMENT ON THE YORK UNIVERSITY CAMPUS. IN ADDITION, THERE ARE CERTAIN OTHER MISCELLANEOUS ACTIVITIES, BUT NONE OF THE ACTIVITIES CARRIED OUT BY THE PERSONS CLAIMED WOULD BRING THEM WITHIN THE MEANING OF THE TERM GUARD AS IT IS USED IN SECTION 11 OF THE ACT.

3. THAT SECTION WAS PRIMARILY ENACTED TO SEPARATE PERSONS WHO PERFORM GUARD FUNCTIONS AND WHOSE DUTIES MAY BRING THEM INTO CONFLICT WITH OTHER EMPLOYEES. AS SUCH IT HAS BEEN DESIRABLE TO SEPARATE THESE PERSONS FROM OTHER EMPLOYEES BECAUSE IT IS USUALLY NECESSARY THAT GUARDS EXERCISE SOME "MONITORIAL OR ADMONITORY AUTHORITY" ACTUAL OR POTENTIAL OVER OTHER EMPLOYEES. SEE GEORGE A CRANE & SONS LIMITED 63 CLLC #16,291; IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED (1969) FEBRUARY OLRB, MTHLY, REP. 1168.

4. IN THIS CASE THERE IS NOTHING TO SUGGEST THAT THE INSPECTORS ENGAGE IN THE TYPE OF ACTIVITY THAT WOULD RESULT IN OUR CONSIDERING THEM TO BE GUARDS.

5. FOR THESE REASONS THE APPLICATION IS DISMISSED.

4173-73-R: GRAND RIVER DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WALTSON PROPERTIES LIMITED (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: N.C. HILBORN FOR THE APPLICANT; RICHARD H. BAKER AND MORRIS KULA FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 11, 1973.

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3. THE APPLICANT IN THE PRESENT CASE IS A COUNCIL OF TRADE UNIONS. THAT COUNCIL OF TRADE UNIONS IS MADE UP OF LOCAL UNIONS 498, 949, 1940 AND 2173. THE BOARD IS SATISFIED THAT THESE LOCAL TRADE UNIONS ARE ALL TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT COUNCIL OF TRADE UNIONS FILED WITH THE BOARD THE BY-LAWS WHICH EACH OF THE FOUR UNIONS PASSED WHICH TRANSFERRED ALL RIGHTS, CLAIMS, PRIVILEGES AND PROCEDURES ARISING FROM ANY APPLICATION OF THE ONTARIO LABOUR RELATIONS ACT AND VESTS WITH THE COUNCIL COMPLETE AND ABSOLUTE BARGAINING AUTHORITY. THESE BY-LAWS ALSO EMPOWER THE COUNCIL THE RIGHT TO SEEK CERTIFICATION OR VOLUNTARY RECOGNITION, NEGOTIATE AND CONCLUDE COLLECTIVE AGREEMENTS AND TO EXERCISE SUCH OTHER MEASURES AND FUNCTIONS AS THE COUNCIL DEEMS APPROPRIATE UNDER THE LABOUR RELATIONS ACT. THE APPLICANT ALSO FILED WITH THE BOARD PHOTO COPIES OF THE MINUTES OF THE VARIOUS LOCALS CONCERNED WITH THE PASSAGE OF THESE BY-LAWS. ACCORDINGLY THE BOARD IS SATISFIED THAT THE APPLICANT IS A COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(G) OF THE ACT, AND FURTHER THE BOARD IS SATISFIED THAT EACH OF THE CONSTITUENT UNIONS OF THE COUNCIL HAS VESTED APPROPRIATE AUTHORITY IN THE COUNCIL TO BE ABLE TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4209-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES GLAZIERS LOCAL UNION 1819 (APPLICANT) V. HILARY BYRNE GLASS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE AND I. KELNER FOR THE APPLICANT; RAY BYRNE, LEIF JENSEN AND DONALD ZALDIN APPEARING AS AGENT FOR COUNSEL LAURENCE ZALDIN; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 11, 1973.

1. AT THE COMMENCEMENT OF THE HEARING OF THIS MATTER THE AGENT FOR COUNSEL FOR THE SOLICITOR FOR THE RESPONDENT REQUESTED AD ADJOURNMENT OF THE PROCEEDINGS. THE BASIS OF HIS REQUEST WAS THAT THE RESPONDENT HAD ONLY RECENTLY BEEN ABLE TO CONTACT HIS SOLICITOR AND AS A RESULT THE SOLICITOR WAS NOT ABLE TO ATTEND THE HEARING. AFTER HEARING ARGUMENT WITH RESPECT TO THIS REQUEST FOR AN ADJOURNMENT, THE BOARD GAVE THE FOLLOWING DECISION AT THE HEARING:

"WE ARE NOT SATISFIED THAT GROUNDS FOR GRANTING AN ADJOURNMENT HAVE BEEN ESTABLISHED IN THE PRESENT CASE. THE BOARD THEREFORE INTENDS TO PROCEED WITH THE HEARING OF THIS APPLICATION. IF HOWEVER THE RESPONDENT FEELS THAT AT SOME POINT A MATTER HAS ARISEN AS A RESULT OF WHICH A LACK OF COUNSEL ACTING ON HIS BEHALF WILL RESULT IN AN ADEQUATE HEARING NOT BEING CONDUCTED, THE BOARD WILL ENTERTAIN A REQUEST FOR AN ADJOURNMENT AT THAT TIME. THE BOARD FEELS AT THE MOMENT THAT SUCH CONTESTED ISSUES MAY NOT ARISE BUT WE WILL HAVE TO PROCEED WITH THE APPLICATION IN ORDER TO DETERMINE WHETHER OR NOT THEY DO ARISE."

AT THIS POINT THE AGENT FOR THE SOLICITOR WITHDREW ON THE GROUNDS THAT THESE WERE THE EXTENT OF HIS INSTRUCTIONS ALTHOUGH CAUTIONED BY THE BOARD THAT IT WOULD PROCEED IN HIS ABSENCE IN ACCORDANCE WITH ITS DECISION.

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4046-73-R: CANADIAN UNION OF INDUSTRIAL EMPLOYEES (APPLICANT) V. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

DECISION OF THE BOARD: SEPTEMBER 12, 1973.

1. THE INTERVENER BY LETTER DATED AUGUST 24, 1973, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED AUGUST 15, 1973, IN THIS MATTER.

2. THE BOARD HAS CONSIDERED THE SUBMISSIONS CONTAINED IN THE LETTERS OF THE APPLICANT, THE RESPONDENT AND THE INTERVENER, DATED AUGUST 29, 1973, AUGUST 27, 1973 AND AUGUST 24, 1973 RESPECTIVELY, PARTICULARLY AS THEY REFER TO THE J. HARRIS & SONS LTD. CASE, 60 CLLC ¶16.177. THE LATTER CASE WAS CITED TO THE BOARD DURING ARGUMENT FOLLOWING THE HEARING.

3. HAVING REGARD TO THE SUBMISSIONS OF ALL PARTIES, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION DATED AUGUST 15, 1973.

4. IN SO DISPOSING OF THE MATTER THE BOARD WOULD DRAW THE ATTENTION OF THE PARTIES TO THE REFERENCES MADE IN THE HARRIS CASE (SUPRA) TO ALTERNATIVE TEST OF VIABILITY, I.E. THE PRESENCE OF OFFICERS ELECTED IN ACCORDANCE WITH THE CONSTITUTION OR OTHERWISE AUTHORIZED PERSONS.

4267-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALPHA FORMING CORP. LTD. (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

DECISION OF THE BOARD: SEPTEMBER 12, 1973.

1. IN THE PRESENT APPLICATION THE APPLICANT TRADE UNION HAS APPLIED FOR CERTIFICATION FOR THE FOLLOWING BARGAINING UNIT WHICH IT CLAIMS TO BE APPROPRIATE:

ALL CONSTRUCTION EMPLOYEES OF THE RESPONDENT ENGAGED IN CONCRETE FORMING CONSTRUCTION IN BOARD AREA #8, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND CLERICAL STAFF, ENGINEERING STAFF, SECURITY GUARDS AND STUDENTS EMPLOYED DURING SUMMER VACATION PERIOD.

THE WORK PERFORMED BY THE EMPLOYEES AFFECTED BY THIS APPLICATION AS SET OUT IN PARAGRAPH 5 OF THE APPLICATION IS:

ALL WORK PERFORMED BY RESPONDENT IN CONNECTION WITH CONCRETE FORMING CONSTRUCTION.

THE JOB SITES LISTED IN PARAGRAPH 6 APPEAR TO BE RESIDENTIAL SUBDIVISIONS.

2. THE APPLICANT IN THE PRESENT CASE IS ONE OF THE TWO LOCALS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA WITH JURISDICTION IN THE GEOGRAPHIC AREA (OFTEN REFERRED TO AS BOARD AREA #8), WHICH INVOLVES THE AREA OF TORONTO AND ITS VICINITY. SINCE THE DECISION OF THIS BOARD IN THE CROSS TOWN PAVING CO. LIMITED CASE, (1965) OLRB MTHLY. REPS. MAY 128, THIS BOARD HAS CONSISTENTLY DEALT WITH THESE TWO LOCALS OF THE LABOURERS' INTERNATIONAL UNION BY FINDING TWO DIFFERENT BARGAINING UNITS TO BE THE APPROPRIATE BARGAINING UNIT FOR CERTIFICATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. THE OTHER LOCAL OF THE LABOURERS' INTERNATIONAL UNION, THAT IS LOCAL 506, IS NORMALLY LIMITED IN ITS BARGAINING UNIT TO CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, WHEREAS THE APPLICANT IN THIS CASE, LOCAL 183, HAS CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS EXCLUDED FROM ITS USUAL BARGAINING UNIT.

3. FROM THE DESCRIPTION OF THE PROJECT ON WHICH THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING IT APPEARS THAT THESE EMPLOYEES ARE WORKING ON BUILDING PROJECTS. THUS, IF THE BOARD WERE TO FOLLOW THE DISTINCTION BETWEEN THESE TWO LOCALS OF THE LABOURERS SET OUT IN THE CROSS TOWN PAVING CO. LIMITED CASE, SUPRA, THERE WOULD APPEAR TO BE NO EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT. ON THE OTHER HAND IT IS OPEN TO THE APPLICANT AND THE RESPONDENT TO ARGUE THAT SOME OTHER BARGAINING UNIT IS THE APPROPRIATE BARGAINING UNIT IN THE PRESENT CASE. THE REGISTRAR IS THEREFORE DIRECTED TO LIST THIS CASE, TOGETHER WITH A NUMBER OF OTHER CASES INVOLVING THE SAME ISSUE, FOR A HEARING AT WHICH TIME THE BOARD WILL CONSIDER ONLY THE MATTER OF THE APPROPRIATE BARGAINING UNIT IN THESE CASES.

4. BECAUSE OF THE EFFECT THAT A DECISION IN THE PRESENT CASE MAY HAVE ON LOCAL 506 OF THE LABOURERS' INTERNATIONAL UNION, THE REGISTRAR IS DIRECTED TO SERVE LOCAL 506 AND THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA WITH NOTICE OF THIS APPLICATION WITH A VIEW TO ADDING THESE TRADE UNIONS AS INTERESTED PARTIES FOR THE PURPOSE OF MAKING REPRESENTATIONS ON THE APPROPRIATE BARGAINING UNIT UNDER THE PROVISIONS OF SECTION 54 OF THE BOARD'S RULES OF PROCEDURE.

4111-73-U: MICHAEL BANDI (COMPLAINANT) V. UNION OF LOCAL 199 UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA U.A.W. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

SEPTEMBER 12, 1973.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT COMPLAINS THAT HE HAS BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED AND HE HAS SUBMITTED HIS REPORT TO THE BOARD.

2. IN HIS COMPLAINT THE COMPLAINANT REFERS TO A NUMBER OF INCIDENTS, BEGINNING IN MAY OF 1968, WHICH ARE ALLEGED TO CONSTITUTE FAILURE BY THE RESPONDENT UNION TO REPRESENT THE COMPLAINANT FAIRLY. HOWEVER, THE FIELD OFFICER INFORMED THE COMPLAINANT THAT SECTION 60 OF THE ACT DID NOT COME INTO FORCE UNTIL FEBRUARY 15, 1971 AND THAT, ACCORDINGLY, THE BOARD COULD NOT DEAL WITH MATTERS ARISING BEFORE THAT DATE. AS A RESULT, THE FIELD OFFICER'S INVESTIGATION WAS LIMITED TO ONE INCIDENT OCCURRING IN FEBRUARY OF 1973. THE STATEMENT OBTAINED BY THE FIELD OFFICER FROM THE COMPLAINANT WAS WITH RESPECT TO THAT INCIDENT ONLY.

3. IT WOULD APPEAR FROM THE COMPLAINANT'S STATEMENT THAT HE CHANGED SHIFTS EVERY TWO WEEKS. IN FEBRUARY OF 1973 HE WAS INFORMED THAT HE WOULD HAVE TO CHANGE FROM A TWO-WEEK SHIFT TO A ONE-WEEK SHIFT. HE REFUSED TO DO THIS AND WHEN HE REPORTED FOR THE SECOND WEEK OF HIS TWO-WEEK STINT HE WAS TOLD THERE WAS NO WORK BECAUSE HE SHOULD HAVE BEEN ON THE EARLIER SHIFT. IT SEEMS THAT THE COMPLAINANT RELUCTANTLY ACCEPTED THIS CHANGE IN SHIFT, BUT THEN ASKED HIS COMMITTEEMAN TO FILE A GRIEVANCE FOR HIM WITH RESPECT TO THE SHIFT CHANGE. THE COMMITTEEMAN REFUSED TO DO SO. THE COMPLAINANT THEN SPOKE TO THE CHAIRMAN OF THE SHOP COMMITTEE AND EXPLAINED WHAT HAD HAPPENED. THE CHAIRMAN INFORMED THE COMPLAINANT THAT HE KNEW ABOUT THE CHANGE BUT THAT HE COULD NOT DO ANYTHING BECAUSE A COMPANY SUPERINTENDENT HAD MADE THE DECISION.

4. IT FURTHER APPEARS THAT WHILE THE COMPLAINANT WAS ON THE TWO-SHIFT BASIS, HIS OPPOSITE NUMBER ON THE OTHER SHIFT WAS CONTENT TO WORK A TWO-SHIFT STINT. HOWEVER, ANOTHER EMPLOYEE, MRS. JOHNSON, EXERCISED HER SENIORITY INTO THE SAME DEPARTMENT AS THE COMPLAINANT AND BECAME THE COMPLAINANT'S OPPOSITE NUMBER. THIS EMPLOYEE WAS NOT CONTENT ON A TWO-WEEK BASIS BUT WISHED TO CHANGE SHIFTS WEEKLY. SHE COMPLAINED THAT THE COMPLAINANT WAS THE ONLY PERSON IN THE DEPARTMENT WORKING ON A TWO-WEEK BASIS AND THIS COMPLAINT WAS TAKEN BY THE EMPLOYEE AND THE COMMITTEEMAN TO THE SUPERINTENDENT WITH THE RESULT THAT THE COMPLAINANT WAS REQUIRED TO CHANGE SHIFTS WEEKLY. IT IS THE COMPLAINANT'S VIEW THAT IN FAILING TO FILE A GRIEVANCE ON HIS BEHALF, THE UNION DISCRIMINATED AGAINST HIM WITH RESPECT TO THE EMPLOYEE WHO REFUSED TO WORK ON A TWO-SHIFT BASIS.

5. IN REPLY TO THIS ALLEGATION, THE RESPONDENT UNION TAKES THE POSITION THAT IT IS LONG-STANDING COMPANY AND UNION PRACTICE THAT SHIFT CHANGES BE MADE ON A WEEKLY BASIS AND THAT THE COMPLAINANT'S ARRANGEMENT WAS A PRIVATE ONE WHICH WAS TOLERATED BECAUSE HIS OPPOSITE NUMBER WAS

CONTENT TO CHANGE SHIFTS EVERY OTHER WEEK. WHEN MRS. JOHNSON BECAME THE COMPLAINANT'S OPPOSITE NUMBER AND REFUSED TO GO ALONG WITH THIS PRACTICE, IT IS THE UNION'S POSITION THAT SHE WAS ENTITLED TO TAKE THIS STAND BECAUSE OF THE ABOVE REFERRED TO COMPANY AND UNION PRACTICE. CONSEQUENTLY, THE UNION, IN ITS VIEW, HAD NO CASE FOR FILING A GRIEVANCE ON BEHALF OF THE COMPLAINANT. IF THE UNION'S CONTENTION IS CORRECT WITH RESPECT TO THE PRACTICE IN THE PLANT AND WITH RESPECT TO THE REASON WHY THE COMPLAINANT WAS PERMITTED TO WORK ON A TWO-WEEK BASIS, THEN IN OUR OPINION, THERE IS NO EVIDENCE THAT THE UNION, IN REFUSING TO FILE A GRIEVANCE, DISCRIMINATED AGAINST THE COMPLAINANT. HOWEVER, WE DO NOT BASE OUR DECISION ON THIS GROUND SINCE WE ARE UNABLE ON THE MATERIALS BEFORE US AND AT THIS STAGE OF THE PROCEEDINGS TO MAKE FINDINGS OF FACT NECESSARY TO SUPPORT SUCH A CONCLUSION.

6. UNDER CLAUSE 65(B) OF THE MASTER AGREEMENT BETWEEN THE RESPONDENT TRADE UNION AND GENERAL MOTORS IN ST. CATHARINES, WHERE THE COMPLAINANT IS EMPLOYED, ARRANGEMENTS HAVE BEEN WORKED OUT BY THE UNION AND THE COMPANY TO DEVIATE FROM SENIORITY RULES AND SHIFT RULES TO ACCOMMODATE INCAPACITATED WORKERS. BEFORE THIS SECTION CAN BE INVOKED, IT IS NECESSARY FOR AN EMPLOYEE WHO ALLEGES THAT HE IS INCAPACITATED TO SUPPLY SATISFACTORY MEDICAL EVIDENCE THAT HIS INCAPACITATION REQUIRES CONSIDERATION. THE COMPLAINANT DID NOT SUPPLY ANY MEDICAL EVIDENCE TO THE UNION WITH RESPECT TO HIS INCAPACITATION ALTHOUGH IN HIS STATEMENT TO THE BOARD HE SAYS THAT THE SHIFT CHANGE HAS RESULTED IN DETERIORATION TO HIS HEALTH TO THE POINT THAT HE WILL BE REQUIRING AT LEAST ONE OPERATION AND PERHAPS TWO. ALTHOUGH THE RESPONDENT UNION HAS OFFERED TO TAKE THIS MATTER UP IF MEDICAL EVIDENCE IS SUPPLIED, THE COMPLAINANT STATES THAT HE HAS NOT ASKED FOR ANY FORMAL ASSISTANCE FROM HIS DOCTOR TO INTERVENE IN HIS PROBLEMS.

7. IT WOULD APPEAR THAT AFTER THE COMPLAINANT SPOKE TO THE CHAIRMAN OF THE SHOP COMMITTEE HE TOOK NO FURTHER ACTION WITH RESPECT TO THE GRIEVANCE ALTHOUGH HE HAD A RIGHT, AMONG OTHER THINGS, TO BRING THE MATTER BEFORE THE MEMBERSHIP OF THE RESPONDENT UNION AT GENERAL MOTORS IN ST. CATHARINES. THE COMPLAINANT CONCEDES THAT HE DID NOT TAKE HIS PROBLEM TO THE GENERAL MEMBERSHIP OF THE LOCAL.

8. IN HIS STATEMENT TO THE FIELD OFFICER, THE COMPLAINANT ASKS THE BOARD TO HELP HIM GET A TRANSFER FROM HIS PRESENT JOB AS A PRODUCTION INSPECTOR TO ANOTHER JOB, "PREFERABLY A MACHINE JOB". THIS APPEARS TO BE THE RELIEF WHICH THE COMPLAINANT IS SEEKING IN THIS COMPLAINT. QUITE CLEARLY, THE BOARD WOULD HAVE NO JURISDICTION TO ORDER SUCH RELIEF SINCE THE EMPLOYER IS NOT EVEN A PARTY TO THESE PROCEEDINGS. IN ANY EVENT, THE RELIEF SOUGHT DOES NOT, IN OUR OPINION, RELATE IN ANY WAY TO THE COMPLAINT WHICH HAS BEEN FILED WITH THE BOARD. THAT COMPLAINT RELATES TO AN ALLEGED FAILURE TO REPRESENT THE COMPLAINANT IN HIS EFFORT TO BE RESTORED TO A TWO-SHIFT SCHEDULE. THAT IS QUITE A DIFFERENT THING FROM A TRANSFER FROM ONE JOB TO ANOTHER.

9. HAVING REGARD TO THE MATTERS SET OUT IN PARAGRAPHS 6, 7, AND 8

OF THIS DECISION, WE ARE OF THE OPINION THAT THIS IS NOT A MATTER WHICH SHOULD BE LISTED FOR A FORMAL HEARING BY THE BOARD TO INQUIRE FURTHER INTO THE COMPLAINT. IN OUR OPINION, THIS IS A SITUATION WHERE IN ALL THE CIRCUMSTANCES THE BOARD SHOULD DECLINE TO PROCEED FURTHER WITH THE COMPLAINT AND SHOULD DISMISS IT. IF THE COMPLAINANT IS OF THE OPINION THAT THE BOARD HAS ERRED IN ANY WAY IN REACHING ITS DECISION ON HIS COMPLAINT, IT IS ALWAYS OPEN TO HIM TO ASK THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.

10. THE COMPLAINT IS THEREFORE DISMISSED.

3622-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD:

SEPTEMBER 13, 1973.

1. BY A DECISION DATED MAY 15, 1973, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN A BARGAINING UNIT FOUND TO BE APPROPRIATE COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN THE VILLAGE OF LAMBETH, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

2. THE VOTE WAS HELD ON JUNE 25, 1973 AND PURSUANT TO A DIRECTION CONTAINED IN A DECISION OF THE BOARD DATED JUNE 28, 1973, THE BALLOT BOX WHICH HAD BEEN SEALED WAS OPENED AND THE BALLOTS COUNTED, EXCEPT FOR THE BALLOT CAST BY P. CHANDLER, WHICH REMAINED SEGREGATED AND WAS NOT COUNTED PENDING A FURTHER RULING BY THE BOARD. THE REASON THAT THE BALLOT CAST BY P. CHANDLER WAS SEGREGATED AND NOT COUNTED WAS DUE TO THE FACT THAT HE WAS DISCHARGED BY THE RESPONDENT ON JUNE 4, 1973 PRIOR TO THE TAKING OF THE VOTE AND WAS THE GRIEVOR IN A COMPLAINT FILED UNDER SECTION 79 OF THE ACT (BOARD FILE NO. 3935-73-U).

3. THE SAID COMPLAINT UNDER SECTION 79 CONCERNING P. CHANDLER WAS HEARD BY ANOTHER DIVISION OF THIS BOARD ON AUGUST 2, 1973. BY A DECISION DATED AUGUST 7, 1973, THAT DIVISION OF THE BOARD FOUND THAT P. CHANDLER WAS NOT DISCHARGED CONTRARY TO THE LABOUR RELATIONS ACT AND DISMISSED THE COMPLAINT. IN THIS CIRCUMSTANCES, P. CHANDLER WAS NOT ENTITLED TO CAST A BALLOT IN THE REPRESENTATION VOTE HELD ON JUNE 25, 1973. ACCORDINGLY, CHANDLER'S BALLOT CANNOT BE TREATED AS A BALLOT CAST AND THE BOARD DIRECTS THAT HIS BALLOT NOT BE COUNTED.

4. HAVING CONSIDERED THE WRITTEN REPRESENTATIONS OF COUNSEL FOR THE PARTIES, THE BOARD IS NOT PERSUADED THAT IT SHOULD DEPART FROM THE PROPOSITION THAT A SPOILED BALLOT SHOULD NOT BE TREATED AS A BALLOT CAST. (SEE ARROW TIMBER LIMITED CASE OLRB M.R. JANUARY 1973 P. 61 AND UPHELD ON APPLICATION FOR JUDICIAL REVIEW BY THE DIVISIONAL COURT BY ITS DECISION DATED MAY 25, 1973).

5. THE RESULT OF THE VOTE THEN IS AS FOLLOWS. THERE WERE NINE BALLOTS CAST. OF THAT NUMBER FIVE WERE CAST IN FAVOUR OF THE APPLICANT AND FOUR WERE CAST AGAINST THE APPLICANT.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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3444-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (ONTARIO HUMANE SOCIETY) (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F.W. MURRAY.

APPEARANCES AT THE HEARING: MARIO HIKL AND J.H. BIRD FOR THE COMPLAINANT; DAVID R. NEILL FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 14, 1973.

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2. THIS IS AN APPLICATION PURSUANT TO SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN IT IS ALLEGED THAT THE GRIEVOR WAS DISMISSED AS A RESULT OF UNION ACTIVITY. THE GRIEVOR WAS EMPLOYED AS AN ANIMAL WARDEN ON OR ABOUT AUGUST 22, 1972, BY THE ONTARIO HUMANE SOCIETY. IN THE EARLY STAGES OF HIS EMPLOYMENT HE WAS CONSIDERED TO BE A GOOD EMPLOYEE. HOWEVER, ACCORDING TO THE TESTIMONY OF THE EMPLOYER THE GRIEVOR'S ATTITUDE STARTED TO CHANGE AND ON FEBRUARY 22, 1973, AT THE END OF THE PROBATIONARY PERIOD, THE GRIEVOR'S SUPERVISOR RECOMMENDED THAT HE NOT BE PROMOTED TO A FULL TIME POSITION. THE REASONS GIVEN WAS THAT THE GRIEVOR WAS ARROGANT, HAD AN ASSUMING ATTITUDE, AND THAT HIS APPEARANCE WAS DISHEVELLED AND UNTIDY. AS A RESULT THE GRIEVOR WAS GIVEN A FURTHER FOURTEEN DAYS EXTENSION TO HIS PROBATIONARY PERIOD.

3. THE EVIDENCE ALSO INDICATES THAT THE UNION COMMENCED ITS ORGANIZATIONAL ACTIVITIES IN EARLY FEBRUARY 1973 AND THAT THE GRIEVOR WAS ACTIVE IN ORGANIZING THE UNION. AS A RESULT OF A DISPUTE IN THE EMPLOYER'S OFFICE BETWEEN THE GRIEVOR AND ANOTHER EMPLOYEE CONCERNING A UNION MEMBERSHIP CARD, THE GRIEVOR'S UNION ACTIVITY BECAME KNOWN TO THE EMPLOYER.

4. IT WAS SHORTLY THEREAFTER THAT THE GRIEVOR WAS CALLED INTO THE OFFICE AND GIVEN THE LETTER ADVISING HIM THAT HE WAS NOT BEING CONFIRMED AS A FULL TIME EMPLOYEE, AND GRANTING HIM FOURTEEN DAYS TO CHANGE. IT ALSO APPEARS THAT ON OR ABOUT FEBRUARY 22ND AT THE SAME TIME THAT THE GRIEVOR'S SUPERVISOR RECOMMENDED THAT HE NOT BE CONFIRMED AS A PERMANENT EMPLOYEE, THAT SHE ORDERED A UNIFORM DESIGNED SPECIFICALLY TO FIT THE GRIEVOR.
5. THERE WAS FURTHER EVIDENCE THAT INDICATED THAT DURING THE EXTENSION PERIOD OF THE GRIEVOR'S PROBATIONARY EMPLOYMENT HE WAS AT WORK WITH ALCOHOL ON HIS BREATH AND THAT FACTOR PRECIPITATED HIS DISMISSAL.
6. THE GRIEVOR TESTIFIED THAT IF HE WAS UNTIDY IN HIS APPEARANCE IT WAS AS A RESULT OF NOT BEING SUPPLIED WITH PROPER SHIRTS OR UNIFORMS. IN ADDITION, THE GRIEVOR TESTIFIED THAT AFTER HIS TERMINATION HE WAS OFFERED EMPLOYMENT AT ANOTHER LOCATION BY A PERSON IN THE SUPERVISORY STAFF OF THE RESPONDENT COMPANY.
7. THIS BOARD IN NUMEROUS CASES HAS STATED THAT WHERE PERSONS ARE DISCHARGED FOR UNION ACTIVITY, THE REASONS FOR SO DOING ARE USUALLY NOT GIVEN AND THE BOARD MUST LOOK AT ALL THE CIRCUMSTANCES AND BE PREPARED TO DRAW INFERENCES FROM SURROUNDING FACTS IN ORDER TO FIND THE REAL REASON FOR DISCHARGE WHERE SUCH ACTIONS ARE FOR UNION ACTIVITY.
8. IN OUR VIEW THE PURCHASE OF A UNIFORM TO THE SPECIFICATIONS OF THE GRIEVOR BY THE SUPERVISOR AT THE SAME TIME THAT THE SUPERVISOR RECOMMENDED THAT THE GRIEVOR NOT BE REHIRED, IS AN INCONSISTENT ACT ON HER PART. THE PURCHASE OF A UNIFORM WAS A PROCEDURE THAT WAS FOLLOWED WHEN PERSONS WERE HIRED ON A FULL TIME BASIS AND INDICATES AN INTENTION TO RETAIN THE GRIEVOR AS A PERMANENT EMPLOYEE. IT IS DIFFICULT TO UNDERSTAND WHY THE SUPERVISOR WOULD RECOMMEND THE PURCHASE OF A UNIFORM, WHILE AT THE SAME TIME RECOMMENDING THE GRIEVOR NOT BE REHIRED.
9. THE SECOND ITEM OF CONCERN IS THE EVIDENCE THAT THE GRIEVOR RECEIVED AN OFFER FROM THE RESPONDENT AFTER HIS DISMISSAL TO RETURN TO WORK AT ANOTHER OF THE RESPONDENT'S LOCATIONS, APPROXIMATELY SIXTY MILES FROM HIS HOME. IN OUR VIEW, IF THE GRIEVOR WAS AS POOR AN EMPLOYEE AS THE EVIDENCE INDICATED, THERE WOULD BE VERY LITTLE REASON TO OFFER THE GRIEVOR EMPLOYMENT AT ANOTHER LOCATION.
10. THE RESULT OF CONSIDERING ALL THE EVIDENCE AND PARTICULARLY THE EVIDENCE WITH RESPECT TO THE UNIFORM AND THE OFFER OF ANOTHER JOB POSTING IS SUFFICIENT TO DRAW THE INFERENCE THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY, AND ACCORDINGLY THE COMPLAINT MUST SUCCEED.
11. THE GRIEVOR HAS NOT ASKED FOR REINSTATEMENT BUT HAS ASKED FOR COMPENSATION. THE EVIDENCE WITH RESPECT TO COMPENSATION WAS VERY UNSATISFACTORY. THE GRIEVOR INDICATED THAT HE HAD RECEIVED OTHER EMPLOYMENT, BUT THE EXACT DATES AND WAGES EARNED WERE NOT PRODUCED IN EVIDENCE. THE GRIEVOR INDICATED THAT HE HAD ATTEMPTED TO MITIGATE HIS DAMAGES BY

REGISTERING WITH THE DEPARTMENT OF MANPOWER FOR ALTERNATE EMPLOYMENT. IT HAS BEEN THE BOARD'S PRACTICE THAT REGISTRATION WITH THE DEPARTMENT OF MANPOWER AND A CLAIM FOR UNEMPLOYMENT INSURANCE WHICH ARE USUALLY MADE SIMULTANEOUSLY ARE REASONABLE STEPS TAKEN BY A DISCHARGED EMPLOYEE TO MITIGATE HIS DAMAGES. HOWEVER, IN THIS CASE, THE GRIEVOR APPEARS TO HAVE WAITED APPROXIMATELY A WEEK OR TEN DAYS AND WAS NOT ABLE TO GIVE THE BOARD THE DATE WHEN HE DID REGISTER WITH MANPOWER. ACCORDINGLY, THERE WAS A PERIOD OF APPROXIMATELY A WEEK TO TEN DAYS WHEN THE GRIEVOR DID NOT TAKE PROPER STEPS TO MITIGATE HIS DAMAGES, AND WE ARE NOT PREPARED TO MAKE ANY ALLOWANCE FOR THAT PERIOD.

12. IN THE RESULT WE DO NOT ALLOW THE GRIEVOR COMPENSATION FOR THE PERIOD CLAIMED, AND WE ORDER THAT THE EMPLOYER PAY TO THE GRIEVOR COMPENSATION FOR A PERIOD OF TWO WEEKS ONLY. IN THE EVENT THAT THE PARTIES ARE UNABLE TO AGREE AS TO THE EXACT AMOUNT OF COMPENSATION FOR THAT PERIOD, THE BOARD WILL REMAIN SEIZED OF THE MATTER SHOULD THERE BE ANY PROBLEM IN THE IMPLEMENTATION OF THIS DECISION.

3815-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION No. 911 (APPLICANT) v. THE TOWNSHIP OF MALDEN (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: SEPTEMBER 13, 1973.

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2. IN THIS MATTER THE APPLICANT SOUGHT A BARGAINING UNIT OF ALL OFFICE AND OUTSIDE EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. THE RESPONDENT EMPLOYS THREE PERSONS - TWO OFFICE EMPLOYEES AND AN EQUIPMENT OPERATOR WHO WORKS ON THE ROADS. AS INDICATED AT THE HEARING ALL THREE EMPLOYEES WERE MEMBERS OF THE APPLICANT TRADE UNION.

3. THE RESPONDENT SUBMITTED THAT THE BARGAINING UNIT SHOULD BE RESTRICTED TO OFFICE AND CLERICAL EMPLOYEES AND THAT THE EQUIPMENT OPERATOR SHOULD NOT BE INCLUDED IN A BARGAINING UNIT WITH THOSE EMPLOYEES BECAUSE HE DID NOT SHARE A COMMUNITY OF INTEREST WITH THEM.

4. THE EFFECT OF THE RESPONDENT'S SUBMISSIONS WOULD BE TO PRECLUDE THE EQUIPMENT OPERATOR FROM COLLECTIVE BARGAINING BECAUSE UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT A BARGAINING UNIT COMPOSED OF ONE PERSON IS NOT AN APPROPRIATE UNIT.

5. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO EXCLUDE THE EQUIPMENT OPERATOR FROM THE APPROPRIATE BARGAINING UNIT, AND WE FIND THAT THE BARGAINING UNIT COMPOSED OF THE OFFICE AND OUTSIDE EMPLOYEES IS AN APPROPRIATE BARGAINING UNIT. SEE P.F. COLLIER & SON LIMITED (1966) OLRB MTHLY.

REP. SEPTEMBER, 408; H. GRAY LIMITED, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, ¶16,011.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3210-72-R: MECHANICAL CONTRACTORS ASSOCIATION NIAGARA (APPLICANT) v. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE-FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 666 (RESPONDENT) v. HOUSING AND URBAN DEVELOPMENT ASSOCIATION OF NIAGARA (INTERVENER).

BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: W. S. COOK, W. C. MCKAY AND L. WICKETT FOR THE APPLICANT; NO ONE APPEARED FOR THE RESPONDENT; PETER STEVENS FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 18, 1973.

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4. THE APPLICANT HAS REQUESTED ACCREDITATION FOR THE FOLLOWING UNIT OF EMPLOYERS:

ALL EMPLOYERS OF PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHT BEING WITHIN THE BOUNDARIES OF LINCOLN AND WELLAND COUNTIES AND THAT PART OF HALDIMAND COUNTY WEST TO CAYUGA IN THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR.

THE GEOGRAPHIC AREA SET OUT IN THE PROPOSED UNIT OF EMPLOYERS IS THAT SET OUT IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT REFERRED TO IN PARAGRAPH ONE SUPRA. IT WAS POINTED OUT TO THE APPLICANT THAT THERE IS IN EXISTENCE AN ACCREDITATION ORDER WITH RESPECT TO THE MECHANICAL CONTRACTORS ASSOCIATION HAMILTON AND LOCAL UNION 67 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES TO THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, A SISTER LOCAL OF THE RESPONDENT HEREIN LOCATED IN HAMILTON. (BOARD FILE No. 1189-71-R, REPORTED IN (1972) O.L.R.B. REP. P. 923). THAT ACCREDITATION ORDER EXTENDS INTO HALDIMAND COUNTY AND THE QUESTION WAS RAISED AS TO THE EFFECT OF THAT EXISTING GEOGRAPHIC AREA WHICH COVERS PART OF THE COUNTY OF HALDIMAND, ON THE PRESENT APPLICATION. THE APPLICANT MADE NO FURTHER REPRESENTATIONS TO THE BOARD ON THIS MATTER. THE BOARD IS OF THE OPINION

THAT THE GEOGRAPHIC AREAS AFFECTED BY ADJACENT APPLICATIONS FOR ACCREDITATION AFFECTING THE SAME TRADE SHOULD, IF POSSIBLE, HAVE THE SAME BOUNDARY LINE SEPARATING THE TWO AREAS. THE PRESENT CASE INVOLVES A COLLECTIVE AGREEMENT WHICH OVERLAPS THE GEOGRAPHIC AREA FOR WHICH THE MECHANICAL CONTRACTORS HAMILTON HAVE ALREADY BEEN ACCREDITED. RATHER THAN DISTURB THE AREA IN THE EXISTING ACCREDITATION ORDER, WHICH WAS BASED ON THE COLLECTIVE AGREEMENT FILED IN THAT CASE, THE BOARD PROPOSES TO USE THE SAME BOUNDARY AS SET OUT IN THAT ORDER. IN PARAGRAPH 22 OF THE BOARD'S DECISION DATED NOVEMBER 2, 1972, IN BOARD FILE NO. 1189-71-R, THE EASTERN BOUNDARY OF THE GEOGRAPHIC AREA OF THE APPROPRIATE UNIT OF EMPLOYERS WAS DESCRIBED AS "..... THEN FOLLOW THE LAKE ERIE SHORELINE TO THE BORDER LINE BETWEEN SOUTH CAYUGA AND DUNN TOWNSHIP IN THE COUNTY OF HALDIMAND, JUST EAST OF THE VILLAGE OF SOUTH CAYUGA, THEN NORTH TO THE LINCOLN COUNTY LINE AT CAISTORVILLE, THEN NORTH-WEST ALONG THE LINCOLN-HALDIMAND COUNTY LINE TO THE POINT WHEN IT MEETS THE WEST-WORTH COUNTY LINE THEN TO LAKE ONTARIO" THE LINE BETWEEN THE TOWNSHIPS OF SOUTH CAYUGA AND DUNN SEPARATES FOUR TOWNSHIPS FROM THE REMAINDER OF HALDIMAND COUNTY. IN THE PRESENT APPLICATION, THE BOARD IS OF THE OPINION THAT THE PROPER DESCRIPTION OF THAT PORTION OF HALDIMAND COUNTY AFFECTED BY THE APPLICATION IS "THE TOWNSHIPS OF DUNN, CANBOROUGH, SHERBROOKE AND MOULTON IN THE COUNTY OF HALDIMAND". THE BOARD ALSO NOTES, THAT ALTHOUGH THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT REFERS TO THE COUNTIES OF LINCOLN AND WELLAND, THESE COUNTIES NOW FORM PART OF THE REGIONAL MUNICIPALITY OF NIAGARA, AND WILL BE REFERRED TO BY THE BOARD IN THAT MANNER. ACCORDINGLY, THE BOARD FINDS THAT THE AREA OF THE REGIONAL MUNICIPALITY OF NIAGARA AND THE TOWNSHIPS OF DUNN, CANBOROUGH, SHERBROOKE AND MOULTON IN THE COUNTY OF HALDIMAND CONSTITUTES THE APPROPRIATE GEOGRAPHIC AREA FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

5. THE APPLICANT HAS APPLIED FOR ACCREDITATION WITH RESPECT TO TWO SECTORS OF THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 106(E) OF THE ACT, NAMELY THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR. THE APPLICANT SUBMITS THAT THE COLLECTIVE AGREEMENT UPON WHICH THIS APPLICATION IS BASED IS APPLIED IN BOTH THESE SECTORS AND FURTHER THAT A SUBSTANTIAL AMOUNT OF BOTH HOUSEBUILDING AND APARTMENT BUILDING IS PERFORMED IN ACCORDANCE WITH THAT AGREEMENT BY MEMBERS OF THE APPLICANT. THE INTERVENER REQUESTS THAT THE BOARD KEEP THE RESIDENTIAL SECTOR OF THE INDUSTRY SEPARATE FROM THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. THE BASIS OF THIS REQUEST IS THAT RESIDENTIAL CONSTRUCTION SHOULD BE CHARACTERIZED AS A CONSUMER ITEM, WHICH IS PAID FOR IN AFTER TAX DOLLARS. WE ARE OF THE OPINION THAT SUCH A CONSIDERATION IS NOT RELEVANT IN DETERMINING WHETHER OR NOT THE BOARD SHOULD COMBINE SECTORS FOR COLLECTIVE BARGAINING, PARTICULARLY WHERE THE SECTORS ARE CURRENTLY DEALT WITH IN ONE BARGAINING PATTERN. ACCORDINGLY, THE BOARD FURTHER FINDS THAT THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR ARE THE APPROPRIATE SECTORS OF THE CONSTRUCTION INDUSTRY FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

6. IN VIEW OF THE ABOVE FINDS, THE BOARD FURTHER FINDS THAT ALL

EMPLOYERS OF PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE TOWNSHIPS OF DUNN, CANBOROUGH, SHERBROOKE AND MOULTON IN THE COUNTY OF HALDIMAND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL AND THE RESIDENTIAL SECTORS OF THE CONSTRUCTION INDUSTRY CONSTITUTE THE UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

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4058-73-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RIO ALGOM MINES LIMITED (INCLUDING BUT NOT RESTRICTED TO ATLAS STEELS COMPANY) (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: BURRIS ORMSBY AND ALEX SHARP FOR THE APPLICANT; H. A. BERESFORD, DAVID C. MASON AND JACK BOYD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 19, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT REQUESTED THE BOARD TO DETERMINE WHETHER CERTAIN PERSONS WERE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. FOLLOWING THE FILING OF THE APPLICATION ON JULY 11, 1973, THE APPLICANT BY LETTER DATED AUGUST 28, 1973 AMENDED ITS REQUEST AND RESTRICTED ITS APPLICATION TO A DETERMINATION WHETHER GARY DOAN, PETER GOSS, RON MUNDY AND GORDON MOOTE WERE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IT WAS THE RESPONDENT'S POSITION THAT MR. GOSS WAS A METHODS ENGINEER AND THE OTHER THREE PERSONS WERE SUPERVISORS, ALL OF WHICH CLASSIFICATIONS ARE SPECIFICALLY EXCLUDED UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT.

2. THE APPLICANT FIRST RAISED THE ISSUE IN A LETTER TO THE RESPONDENT DATED MAY 8, 1973. ALTHOUGH THE RESPONDENT QUESTIONED THE TIMELINESS OF THE APPLICATION, IT WOULD APPEAR THAT SINCE THE MATTER HAD BEEN RAISED PRIOR TO THE MAKING OF THE APPLICATION ON JULY 11 THE APPLICATION IS TIMELY.

3. THE RESPONDENT FURTHER ARGUED THAT SINCE THE PERSONS IN DISPUTE OCCUPY CLASSIFICATIONS WHICH ARE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT REPRESENTED BY THE APPLICANT UNION, NO QUESTION COULD ARISE WITH RESPECT TO THEM UNDER THE PROVISIONS OF SECTION 95(2) OF THE LABOUR RELATIONS ACT AND THE APPLICANT IS ESTOPPED FROM SEEKING RELIEF UNDER THAT SECTION OF THE ACT.

4. IN VIEW OF THE NATURE OF THE RESPONDENT'S OBJECTIONS, A TWO-PART INQUIRY MAY BE NECESSITATED. IN ORDER TO DEAL WITH THE RESPONDENT'S

OBJECTIONS AND IN AN EFFORT TO OBTAIN THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO ASCERTAIN WHETHER A QUESTION COULD PROPERLY ARISE BETWEEN THE PARTIES, IN VIEW OF THE NATURE OF THEIR BARGAINING RELATIONSHIP AS EVIDENCED BY THE DESCRIPTION OF THE BARGAINING UNIT IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, THE BOARD'S INITIAL INQUIRY WILL BE RESTRICTED TO WHETHER THE FOUR PERSONS NOT ONLY HOLD THE TITLES TO CLASSIFICATIONS WHICH ARE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT COVERED BY THEIR COLLECTIVE AGREEMENT BUT IN FACT EXERCISE THE DUTIES AND RESPONSIBILITIES WHICH ARE CONSISTENT WITH, OR ARE SUBSTANTIALLY THE SAME AS, THE DUTIES AND RESPONSIBILITIES EXERCISED BY OTHER PERSONS WHO HAVE BEEN EXCLUDED FROM THE BARGAINING UNIT BY REASON OF THE FACT THAT THEY WERE EMPLOYED IN THE SAME EXCLUDED CLASSIFICATIONS.

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4046-73-R: CANADIAN UNION OF INDUSTRIAL EMPLOYEES (APPLICANT) V. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. B. WATERMAN AND N. RUDISI FOR THE APPLICANT; JAMES B. NOONAN, LOUISE BINDER AND JIM KING FOR THE RESPONDENT; JEFFERY SACK, J. C. HORAN AND P. CAVELLUZZO FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 19, 1973.

1. THE INTERVENER ADDRESSED TWO LETTERS TO THE BOARD, EACH DATED AUGUST 24, 1973. ONE OF THESE LETTERS REQUESTS THE BOARD TO RECONSIDER ITS DECISION OF AUGUST 15, 1973. THAT REQUEST WAS DENIED BY THE BOARD IN ITS DECISION OF SEPTEMBER 12, 1973.

2. IN THE OTHER LETTER OF AUGUST 24, 1973, THE INTERVENER SUBMITTED THAT THE CANADIAN UNION OF INDUSTRIAL EMPLOYEES IS NOT, IN FACT, THE ACTUAL APPLICANT IN THIS CASE. THE INTERVENER ARGUED THAT THE ACTUAL APPLICANT IS A "TEMPORARY COMMITTEE" ELECTED BY A GENERAL MEETING OF CANADIAN UNION OF INDUSTRIAL EMPLOYEES WITHOUT ANY AUTHORITY UNDER THE CONSTITUTION OF THAT ORGANIZATION. THE SUBMISSION IS DIRECTED NOT TOWARDS THE QUESTION OF STATUS OF THE APPLICANT AS A TRADE UNION, BUT RATHER AS TO THE IDENTITY OF THE APPLICANT.

3. THE GIST OF THE INTERVENER'S SUBMISSION IS CONTAINED IN THE FOLLOWING EXTRACT FROM ITS LETTER:

"THIS SUBMISSION DOES NOT CONCERN THE STATUS OF THE CANADIAN UNION OF INDUSTRIAL EMPLOYEES, BUT THE IDENTITY OF THE APPLICANT. EVEN

ASSUMING THE CANADIAN UNION OF INDUSTRIAL EMPLOYEES TO BE A TRADE UNION WITHIN THE MEANING OF THE ACT, IT IS RESPECTFULLY SUBMITTED THAT THAT ORGANIZATION IS THE APPLICANT ONLY ON THE FACE OF THE CERTIFICATION APPLICATION BUT IS NOT THE ACTUAL APPLICANT. IT WAS ADMITTED IN EVIDENCE AND INDEED REGARDED IN THE BOARD'S DECISION THAT THE ACTIVITIES OF THE ORGANIZATION HAVE BEEN CARRIED ON BY A "TEMPORARY COMMITTEE". THE CERTIFICATION APPLICATION BEFORE THE BOARD HAS NOT BEEN LAUNCHED WITH THE AUTHORIZATION OF THE CANADIAN UNION OF INDUSTRIAL EMPLOYEES IN ACCORDANCE WITH ITS CONSTITUTION BUT BY A "TEMPORARY COMMITTEE" BEREFT OF ANY CONSTITUTIONAL AUTHORITY TO ACT ON BEHALF OF THE CANADIAN UNION OF INDUSTRIAL EMPLOYEES.

THE SITUATION IS ANALOGOUS TO AN INDIVIDUAL BRINGING AN APPLICATION IN THE NAME OF A TRADE UNION WITHOUT ANY AUTHORITY FROM THAT TRADE UNION TO DO SO. THE TRADE UNION MAY BE A UNION WITHIN THE MEANING OF THE ACT, BUT THE ACTUAL APPLICANT IS THE INDIVIDUAL AND SINCE AN INDIVIDUAL IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT SUCH APPLICATION MUST BE DISMISSED. IN THIS CASE ALSO IT IS QUITE CLEAR THAT THE "TEMPORARY COMMITTEE" ITSELF IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT."

4. WE CAN BEST SUMMARIZE THE POSITION TAKEN BY THE APPLICANT ON THE QUESTION OF IDENTITY BY CITING THE FOLLOWING PARAGRAPH CONTAINED IN THE INTERVENER'S LETTER OF AUGUST 29, 1973:

"WITH RESPECT TO THE OTHER LETTER, IF THE ARGUMENT OF THE INTERVENER WERE CARRIED THROUGH TO ITS LOGICAL CONCLUSION, NO ORGANIZATION OF INDIVIDUALS COULD EVER ACT EXCEPT BY A MAJORITY OF ALL THE MEMBERS. THE MEMBERS, BY A MAJORITY, ENTRUSTED THE CARRYING OUT OF THE BUSINESS OF THE UNION TO A COMMITTEE FOR THE TIME BEING AND THE ACTS OF THAT COMMITTEE THEREBY BECOME THE ACTS OF THE UNION JUST AS THE ACTS OF AN EXECUTIVE WOULD. THE DECISION OF ALCAN UNIVERSAL HOMES, WHICH WAS CITED, SETS OUT THAT IF THE UNION CHOOSES NOT TO ELECT OFFICERS IT MUST ADOPT AN ACCEPTABLE METHOD OF BEING ABLE TO ACT OR FUNCTION. IT IS IMPLICIT IN THE BOARD'S DECISION

IT IS IMPLICIT IN THE BOARD'S DECISION OF AUGUST 15, 1973 THAT THE BOARD, FOR PURPOSES OF THE HEREIN APPLICATION, REGARDS THE METHOD OF ACTING OR FUNCTIONING ADOPTED BY THE APPLICANT AS ACCEPTABLE."

5. THE APPLICANT, HAVING JOINED ISSUE ON THE QUESTION OF IDENTITY RAISED BY THE INTERVENER, THE BOARD HEARD EVIDENCE AND ARGUMENT ON THE QUESTION.

6. THE BOARD IS OF THE OPINION THAT THE QUESTION RAISED BY THE INTERVENER WITH RESPECT TO THE IDENTITY OF THE APPLICANT RELATES TO SOME EXTENT TO THE QUESTION OF AUTHORIZATION ALREADY DEALT WITH BY THE BOARD IN ITS PREVIOUS DECISIONS.

7. THE BOARD, HOWEVER, HAS CONSIDERED THE EVIDENCE AND THE WRITTEN SUBMISSIONS AND ARGUMENTS DIRECTED SPECIFICALLY TO THE MATTER OF IDENTITY. THE BOARD FINDS THAT THE "TEMPORARY COMMITTEE" WAS AUTHORIZED BY THE GENERAL MEMBERSHIP MEETING HELD ON MAY 16, 1973, AS RECORDED IN THE MINUTES THEREOF "TO SERVE AS THE EXECUTIVE UNTIL THE EXECUTIVE IS REGULARLY ELECTED AND TO HAVE ALL THE RIGHTS, POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE AS SET OUT IN THE CONSTITUTION." THERE WAS NO DIRECT INSTRUCTION GIVEN BY THE MEMBERSHIP TO APPLY FOR CERTIFICATION, BUT AMONG THE POWERS AND DUTIES OF THE EXECUTIVE IS THAT OF CONDUCTING THE BUSINESS OF THE UNION WHICH MUST OBVIOUSLY INCLUDE THE VERY FUNDAMENTAL STEP OF SEEKING CERTIFICATION. THAT THIS MIGHT BE DONE THROUGH A BUSINESS MANAGER APPOINTED BY THE COMMITTEE IN THE EXERCISE OF THE POWERS GIVEN IT BY THE MEMBERSHIP APPEARS TO BE EQUALLY CLEAR. THE COMMITTEE AND THE BUSINESS AGENT ARE, IN EFFECT, THE APPLICANT UNION IN THE PRESENT CONTEXT.

8. THE BOARD THEREFORE DISMISSES THE SUBMISSION OF THE INTERVENER WITH RESPECT TO WHAT THE LATTER REFERS TO AS THE "IDENTITY" OF THE APPLICANT.

4390-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. TORONTO ZENITH CONTRACTING LTD. (RESPONDENT).

BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

SEPTEMBER 24, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION BY THE APPLICANT TRADE UNION FOR CERTIFICATION OF CERTAIN OF THE EMPLOYEES OF THE RESPONDENT. THE TERMINAL DATE FIXED BY THE REGISTRAR IN THE PRESENT APPLICATION WAS SEPTEMBER 20, 1973. ON THE TERMINAL DATE, THE APPLICANT SENT BY REGISTERED MAIL SEVEN (7) COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE

APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. THE FORM 54 IS SIGNED BY THE ADMINISTRATOR OF THE APPLICANT TRADE UNION AND IS FILED IN SUPPORT OF 29 MEMBERSHIP DOCUMENTS. IN THIS PARTICULAR CASE HOWEVER, THERE HAS BEEN FILED WITH THE BOARD ONLY THE SEVEN MEMBERSHIP REFERRED TO ABOVE.

2. THE POSSIBILITY ARISES THAT THE APPLICANT MIGHT HAVE DESIRED THE BOARD TO TRANSFER MEMBERSHIP DOCUMENTS FROM SOME OTHER FILES. HOWEVER, SUCH A REQUEST HAS NOT BEEN MADE AND NOW CANNOT BE MADE BEFORE THE TERMINAL DATE. THE BOARD HAS FOR MANY YEARS CONSTRUED SECTION 48 OF THE BOARD'S RULES OF PROCEDURE VERY STRICTLY. PARTICULARLY, THE BOARD HAS REQUIRED THAT EVIDENCE OF MEMBERSHIP IN A PARTICULAR APPLICATION BE FILED IN THAT PARTICULAR APPLICATION BEFORE THE TERMINAL DATE. THUS, ALTHOUGH THE BOARD DOES ACKNOWLEDGE REQUESTS BY PARTIES TO TRANSFER EVIDENCE OF MEMBERSHIP FROM ONE FILE OR APPLICATION TO ANOTHER APPLICATION, SUCH A REQUEST MUST BE MADE IN WRITING PRIOR TO THE TERMINAL DATE TOGETHER WITH A PROPER FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY (SEE THE E. AND M. LATHING CASE, OLRB REPS. [1965] JUNE, PAGE 209). NO SUCH REQUEST HAVING BEEN MADE IN THE PRESENT CASE THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE STANDS AT SEVEN DOCUMENTS.

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4. ACCORDINGLY, THIS APPLICATION IS DISMISSED.

4042-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. WILLIAM H. RORER (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. SACK, PAUL CAVALLUZZO, VINCENT GENTILE AND GEORGE ELLIS; J. P. BORDEN, K. R. PRESTON AND ROGER G. OATLEY FOR THE RESPONDENT; NO ONE APPEARED FOR THE OBJECTORS.

DECISION OF THE BOARD:

SEPTEMBER 25, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION DURING WHICH THE RESPONDENT ALLEGED THAT AN EMPLOYEE, BHARAT PATEL, HAD SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION BUT HAD FAILED TO MAKE A MONEY PAYMENT.

2. FOLLOWING THE BOARD'S USUAL INQUIRY INTO THE NON-PAY ALLEGATION, THE MATTER WAS LISTED FOR CONTINUATION OF HEARING ON SEPTEMBER 10, 1973 AT WHICH EVIDENCE WAS HEARD WITH RESPECT TO THE ALLEGATION.

3. IT IS QUITE CLEAR THAT ON THE 29TH OF JUNE, 1973, BHARAT PATEL SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION. IT IS EQUALLY CLEAR THAT AT THAT TIME PATEL PAID NO MONEY TO ELLEN KOLVERS, A FELLOW EMPLOYEE, WHO IS INDICATED ON THE CARD AS BEING THE COLLECTOR. THE EVIDENCE IS, HOWEVER, THAT AN ARRANGEMENT WAS MADE BETWEEN KOLVERS AND PATEL THAT, IN VIEW OF THE FACT THAT THE LATTER HAD NO MONEY AT THE TIME, KOLVERS WOULD PAY THE DOLLAR ON HIS BEHALF AND THAT HE WOULD LATER REPAY KOLVERS. WE HAVE NO HESITATION IN FINDING THAT THERE WAS A GENUINE LOAN OF ONE DOLLAR MADE BY KOLVERS FOR THE PAYMENT OF PATEL'S INITIATION FEE AND THAT PATEL FULLY INTENDED AT THAT TIME TO REPAY KOLVERS AS SOON AS HE WAS IN FUNDS.

4. ON JULY 3RD, KOLVERS WAS DISCHARGED BY THE RESPONDENT AND WAS THEREFORE OUT OF TOUCH WITH PATEL. KOLVERS LATER WENT ON HOLIDAYS AND THE MATTER WAS FORGOTTEN BY HER.

5. ON JULY 3RD, THE DATE ON WHICH KOLVERS WAS DISCHARGED, SHE TURNED IN PATEL'S CARD TOGETHER WITH OTHERS TO MR. VINCENT GENTILE, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT. AT THE SAME TIME, SHE TURNED IN INITIATION FEES COVERING THE CARDS. AT THAT TIME, GENTILE INQUIRED OF HER AS TO WHETHER A DOLLAR HAD BEEN COLLECTED WITH RESPECT TO EACH OF THE CARDS THAT SHE HAD TURNED OVER TO HIM, AND SHE REPLIED IN THE AFFIRMATIVE. SHE DID NOT MAKE ANY MENTION OF THE LOAN ARRANGEMENT WITH PATEL. HER EXPLANATION FOR THE OMISSION WAS THAT SHE DID NOT REALIZE AT THAT TIME THAT THE PERSONAL LOAN SHE HAD MADE TO PATEL WOULD CAUSE ANY COMPLICATIONS.

6. MR. GENTILE WAS FIRST MADE AWARE OF THE SITUATION BY COUNSEL FOR THE RESPONDENT SUBSEQUENT TO THE INITIAL HEARING OF THIS MATTER ON JULY 16, 1973. HE IMMEDIATELY CAUSED ANOTHER EMPLOYEE FOR THE RESPONDENT, ISABEL HAMILTON, TO COLLECT THE DOLLAR FROM PATEL. THIS THE LATTER DID AND TURNED THE DOLLAR IN TO KOLVERS, ON OR ABOUT AUGUST 13, 1973. PATEL CONFIRMED THE PAYMENT TO HAMILTON AND SAID THAT HE HAD INTENDED TO PAY HIS DOLLAR ALL ALONG BUT HAD NOT SEEN KOLVERS SINCE THE DAY HE SIGNED THE CARD.

7. WE ARE SATISFIED ON THE EVIDENCE THAT, HAD IT NOT BEEN FOR THE FACT THAT KOLVERS WAS DISCHARGED ON JULY 3RD AND SUBSEQUENTLY WENT ON HOLIDAYS, PATEL WOULD HAVE CARRIED OUT HIS INTENT TO REPAY THE DOLLAR TO HER AS SOON AS HE CAME IN CONTACT WITH HER.

8. THERE IS NO DOUBT THAT GENTILE HAD INSTRUCTED KOLVERS AND OTHER EMPLOYEES, WHO ACTED IN SIGNING UP MEMBERS, OF THE NECESSITY OF COLLECTING A DOLLAR FROM EACH PERSON WHO SIGNED. NOR IS THERE ANY DOUBT THAT BEFORE FILING FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, HE MADE INQUIRIES AS TO WHETHER A DOLLAR HAD IN FACT BEEN COLLECTED IN EACH CASE AND THAT HE COMPLETED THE FORM 8 ON THE BASIS OF THE INFORMATION GIVEN TO HIM.

9. CLEARLY, KOLVERS OUGHT TO HAVE ADVISED VINCENT GENTILE PRECISELY

AS TO HER DEALINGS WITH PATEL. HER FAILURE TO ATTRIBUTE SIGNIFICANCE TO THIS TRANSACTION, HOWEVER, DOES NOT, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, AFFECT THE BONA FIDES OF THE LOAN ITSELF. IT IS TO BE OBSERVED THAT KOEVERS WAS SIMPLY AN EMPLOYEE VOLUNTEER COLLECTOR AND NOT AN OFFICIAL OF THE APPLICANT UNION.

10. THE BOARD IS THEREFORE SATISFIED THAT NO ATTEMPT HAS BEEN MADE TO COMMIT A FRAUD ON THE BOARD WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED ON BEHALF OF THE APPLICANT. (SEE SKENE CARTAGE COMPANY LIMITED [1966] OLRB REP. 30).

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4241-73-R: (GROUP SPOKESMAN) PAUL TAYLOR (APPLICANT) V. LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL CIO CLC) (RESPONDENT) V. NORANDA METAL INDUSTRIES LIMITED, FERGUS DIVISION (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: P. TAYLOR FOR THE APPLICANT; P. SCHLOTZHAUER AND J. KING FOR THE RESPONDENT; R. DRMAJ, I. BELL AND K. FAULCONBRIDGE FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: SEPTEMBER 26, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD DATED AUGUST 27, 1973, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING ON SEPTEMBER 12, 1973 AT WHICH TIME MR. TAYLOR THE APPLICANT HEREIN PROCEEDED TO ADDUCE EVIDENCE CONCERNING THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN THIS TIMELY APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION.

2. THERE ARE 62 PERSONS ON THE REVISED LIST OF EMPLOYEES FILED BY THE RESPONDENT WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE STATEMENT OF DESIRE FILED IN SUPPORT OF THIS APPLICATION CONTAINS THE NAMES OF 41 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL OF THESE NAMES CORRESPOND WITH THE NAMES APPEARING ON THE RESPONDENT'S REVISED LIST.

3. HOWEVER OF THESE 41 NAMES APPEARING ON THE STATEMENT OF DESIRE, MR. TAYLOR TESTIFIED THAT HE HAD WITNESSED ONLY 14 OF THESE NAMES AND THAT OTHER PERSONS HAD, IN HIS ABSENCE, OBTAINED THE OTHER SIGNATURES ON THE DOCUMENT. UPON CONCLUDING HIS TESTIMONY, AND BEING APPRISED BY THE BOARD OF THE SITUATION IN THIS REGARD, MR. TAYLOR ADVISED THE BOARD

THAT THESE OTHER PERSONS WHO HAD PARTICIPATED IN OBTAINING THE SIGNATURES WERE NOT PRESENT AT THE HEARING AND REQUESTED THAT HE BE PERMITTED TO CALL THEM AT A LATER DATE. THE RESPONDENT STRENUOUSLY OBJECTED TO DELAYING THIS MATTER ANY FURTHER AND REQUESTED THAT THE BOARD DISPOSE OF THIS APPLICATION ON THE BASIS OF THE EVIDENCE AS ADDUCED AT THIS HEARING.

4. A PERUSAL OF THE RECORDS IN THIS MATTER DISCLOSES THAT THE FORM 15 NOTICE TO EMPLOYEES OF APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS AND OF HEARING WAS DULY POSTED UPON THE PREMISES OF THE INTERVENER ON AUGUST 16, 1973. PARAGRAPH 7 OF THIS NOTICE PROVIDES;

"7. ANY EMPLOYEE OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 4 AND 5 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.*

THE ASTERISK REFERS TO AN EXPLANATORY NOTE APPEARING AT THE END OF THIS NOTICE WHICH STIPULATES THAT:

"WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 7 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE FILED BY THE APPLICANT."

5. MOREOVER, THESE REQUIREMENTS ARE IN CONFORMITY WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND TO WHICH BY LETTER FROM THE REGISTRAR DATED AUGUST 15, 1973, THE APPLICANT WAS SPECIFICALLY ADVISED, INTER ALIA, AS FOLLOWS:

"I WOULD DRAW YOUR ATTENTION TO SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AS SET OUT IN FORM 2 ENCLOSED HERewith. EVIDENCE OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE

REPRESENTED BY A TRADE UNION MUST BE IN THE FORM PROVIDED FOR IN SECTION 48 OF THE BOARD'S RULES, AND MUST BE FILED WITH THE BOARD NOT LATER THAN AUGUST 23RD, 1973, THE TERMINAL DATE SET FOR THIS APPLICATION.

THE APPLICANT WILL BE REQUIRED TO ATTEND THE HEARING IN ORDER TO PRESENT ITS CASE TO THE BOARD AND TO SPEAK TO SUCH ISSUES AS MAY ARISE IN CONNECTION WITH THIS APPLICATION. FAILURE OF THE APPLICANT TO APPEAR AT THE HEARING OF THIS CASE, EITHER IN PERSON OR THROUGH AN AUTHORIZED REPRESENTATIVE, WILL RESULT IN THE REJECTION BY THE BOARD OF THE APPLICATION.

IT SHOULD BE NOTED THAT ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED."

6. HAVING CAREFULLY REVIEWED ALL OF THE CIRCUMSTANCES OF THIS CASE, INCLUDING THE NATURE OF THE NOTICE AS DELIVERED TO THE APPLICANT SETTING OUT THE BOARD'S REQUIREMENTS AND TAKING INTO ACCOUNT THE BOARD'S JURISPRUDENCE IN THIS REGARD, (SEE FOR EXAMPLE THE ELECTRONIC CONTROLS LIMITED CASE [1971] OLRB REP. 319, CIS CONSTRUCTION SPECIALTIES LIMITED CASE [1971] OLRB REP. 343; ACME ELECTRIC LTD. CASE OLRB M.R. NOVEMBER 1966, P. 616 AND REMINGTON RAND LIMITED CASE OLRB M.R. MARCH 1963, P. 535), WE ARE NOT PREPARED TO FURTHER EXTEND THESE PROCEEDINGS.

7. SECTION 49(3) OF THE ACT PROVIDES THAT BEFORE AN APPLICANT IS ENTITLED TO THE TAKING OF A REPRESENTATION VOTE, THE APPLICANT MUST SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. AS THE EVIDENCE IN SUPPORT OF THIS APPLICATION DOES NOT SATISFY THIS REQUIREMENT, THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER W. H. WIGHTMAN: SEPTEMBER 26, 1973.

WHILE ACKNOWLEDGING THE FACTS AS SET FORTH IN THE MAJORITY DECISION, I WOULD RESPECTFULLY DISSENT ON THE GROUNDS THAT NATURAL JUSTICE HAS BEEN DENIED THE APPLICANT.

THIS WAS AN APPLICATION BY PAUL TAYLOR ACTING AS A SPOKESMAN FOR A GROUP OF EMPLOYEES AT NORANDA METAL INDUSTRIES LIMITED, FERGUS DIVISION, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION, LOCAL 2345, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

AT AN EARLIER HEARING IN THIS MATTER THIS PANEL OF THE BOARD CONSIDERED THE QUESTION OF THE TIMELINESS OF THE INSTANT APPLICATION AND BY WRITTEN DECISION DATED AUGUST 27TH, 1973, FOUND THAT THE APPLICATION WAS TIMELY. AT THE INITIAL HEARING, MR. TAYLOR APPEARED BY HIMSELF AND WITHOUT LEGAL REPRESENTATION. AT THE CONTINUATION OF HEARING ON SEPTEMBER 12TH, 1973, MR. TAYLOR AGAIN ATTENDED UNREPRESENTED BY LEGAL COUNSEL. AT THE SECOND HEARING ON SEPTEMBER 12TH, THE BOARD'S ENQUIRY WAS CONCERNED WITH RECEIVING EVIDENCE AS TO THE "(A) CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED."

THERE ARE 62 PERSONS IN THE EMPLOY OF THE INTERVENER AT THE MATERIAL TIME AND ON THE PETITION PRESENTED TO THE BOARD BY MR. TAYLOR THE NAMES OF 47 OF HIS FELLOW EMPLOYEES APPEARED. HOWEVER, AS POINTED OUT IN THE DECISION OF THE MAJORITY, MR. TAYLOR WAS ABLE TO TESTIFY THAT HE PERSONALLY SAW ONLY 14 OF THESE PERSONS SIGN THE PETITION AND THAT THE REMAINDER WERE WITNESSED BY FELLOW EMPLOYEES WHO WERE NOT PRESENT AT THE BOARD HEARING. WHEN IT WAS POINTED OUT TO MR. TAYLOR THAT IT IS THE USUAL PRACTICE OF THE BOARD TO REQUIRE EVIDENCE FROM THOSE PERSONS WHO WITNESSED THE PLACING OF A PERSON'S NAME ON A PETITION, MR. TAYLOR REQUESTED WHAT IN EFFECT AMOUNTED TO AN ADJOURNMENT OF THE HEARING IN ORDER THAT HE MIGHT OBTAIN THE ATTENDANCE OF THESE OTHER PERSONS. THE SOLE BASIS FOR THE RESPONDENT'S OBJECTION TO AN ADJOURNMENT WAS THAT IT WISHED TO DISPOSE OF THE APPLICATION WITHOUT FURTHER DELAY. IT SHOULD BE MENTIONED THAT IF THERE ARE ANY PREVIOUS DELAYS IN THIS APPLICATION NONE ARE ATTRIBUTABLE TO MR. TAYLOR.

THE MAJORITY OF THE BOARD IN DISPOSING OF THIS MATTER BASED ITS DECISION UPON THE WORDING OF PARAGRAPH 7 AS IT APPEARS IN FORM 15, NOTICE TO EMPLOYEES OF APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS. AS INDICATED ABOVE, THE NOTICE INDICATES THAT THE BOARD IS CONCERNED WITH "THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED" AND INDICATES THAT THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSONS WHO FAIL TO ATTEND, AND THEN GOES ON TO STATE THAT WHERE THE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED FOR IN PARAGRAPH 7, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE FILED BY THE APPLICANT. I REFER ALSO TO THAT PORTION OF THE MAJORITY DECISION IN WHICH REFERENCE IS MADE TO A LETTER TO THE APPLICANT FROM THE REGISTRAR DATED AUGUST 15TH, 1973, WHICH, MORE OR LESS, PARAPHRASES THE INFORMATION CONTAINED IN PARAGRAPH 7 OF THE NOTICE EARLIER REFERRED TO AND IS NO MORE SPECIFIC IN ITS DIRECTION TO THE APPLICANT.

IT SEEMS TO ME THAT MR. TAYLOR AND INDEED THE EMPLOYEES WHO SIGNED THE PETITION IN THIS MATTER SHOULD NOT BE PREJUDICED BECAUSE OF THE HIGHLY TECHNICAL REQUIREMENTS OF THIS BOARD IN INTERPRETING THE WORD "MANNER" AS SET FORTH IN FORM 15 REFERRED TO ABOVE. IT IS QUITE CONCEIVABLE THAT MR. TAYLOR AND THE PERSONS FOR WHOM HE WAS SPEAKING FELT THAT IT WAS SUFFICIENT IF MR. TAYLOR WERE IN ATTENDANCE AT THE BOARD HEARING TO

INDICATE THAT THE PETITION WAS PREPARED BY HIM AND THAT HE ALONG WITH A NUMBER OF OTHER PERSONS PERSONALLY WITNESSED THE PLACING OF SIGNATURES ON THE PETITION. IT DID NOT OCCUR TO THE GROUP OF EMPLOYEES CONCERNED THAT EACH WITNESS HAD TO BE IN ATTENDANCE AT THE BOARD HEARING. BEARING IN MIND THE REASONABLE INTERPRETATION GIVEN TO THE BOARD'S RULES AND MODES OF PROCEDURE BY MR. TAYLOR, AND GIVEN THE FURTHER FACT THAT HE MADE AN HONEST MISTAKE IN INTERPRETING THE PROCEDURAL REQUIREMENTS OF THE BOARD, IT IS BEYOND MY UNDERSTANDING AS TO WHY THE BOARD SHOULD HAVE DENIED MR. TAYLOR THE OPPORTUNITY TO CALL EVIDENCE WHICH CLEARLY COULD HAVE BEEN AVAILABLE TO HIM. THERE IS NOTHING TO SUGGEST THAT IF AN ADJOURNMENT WERE GRANTED MR. TAYLOR, THAT HE WOULD NOT HAVE BEEN ABLE TO PRODUCE WITNESSES WHO WOULD HAVE TESTIFIED IN REGARD TO THE OTHER NAMES PLACED ON THE PETITION.

IT CANNOT BE SUGGESTED FOR A MOMENT THAT THERE WAS ANY REAL PREJUDICE TO THE RESPONDENT UNION OTHER THAN THE FACT THAT IT MIGHT HAVE TO ATTEND AT A FURTHER HEARING IN THIS MATTER. ONE COULD ARGUE THAT AN ADJOURNMENT WOULD BE OF GREATER PREJUDICE TO THE INTERVENER, NORANDA METAL INDUSTRIES LIMITED, SINCE THE COLLECTIVE AGREEMENT HAD EXPIRED BY THE DATE OF HEARING. HOWEVER, THE SPOKESMAN FOR THE COMPANY INDICATED THAT NO OBJECTION WOULD BE RAISED AND, IN ANY EVENT, I WOULD HAVE THOUGHT OUR GREATER CONCERN IN THIS INSTANCE SHOULD BE FOR PAUL TAYLOR AND THE GROUP OF EMPLOYEES HE REPRESENTS.

THE LACK OF PREJUDICE TO THE RESPONDENT UNION IS ESPECIALLY APPARENT WHEN IT IS REMEMBERED THAT THERE WERE NO CHARGES OF IMPROPER ACTIVITY FILED BY THE RESPONDENT UNION IN THIS MATTER NOR WAS THERE A COUNTER-MANDING PETITION BY OTHER EMPLOYEES OBTAINED BY THE RESPONDENT UNION AND PRESENTED TO THE BOARD IN THIS HEARING. INDEED, THE ONLY PREJUDICE THAT THE RESPONDENT UNION WOULD INCUR IF AN ADJOURNMENT WERE GRANTED WOULD BE THAT IT WOULD STAND A MUCH Surer CHANCE OF HAVING ITS BARGAINING RIGHTS AT THE INTERVENER COMPANY TERMINATED. I DO NOT BELIEVE THAT SECTION 49 WAS INTENDED TO PREVENT THIS TYPE OF MISCHIEF OCCURRING TO A TRADE UNION.

I WOULD POINT OUT THAT IN ADDITION TO THE OVERTECHNICAL INTERPRETATION THAT THE BOARD PLACES ON ITS RULES OF PROCEDURE IT ACTED IN A MANNER WHICH I BELIEVE IS AN IMPROPER USE OF ITS DISCRETION. THE BOARD'S PRACTICE IN THIS AREA IS CLEARLY HIGHLY DISCRETIONARY AND GIVEN THE BACKGROUND OF THIS CASE IT APPEARS THAT THE BOARD HAS EXERCISED THAT DISCRETION IN FAVOUR OF THE RESPONDENT UNION WITHOUT ANY SOUND OR REASONABLE BASIS FOR DOING SO, AND THAT IT HAS, AS A COROLLARY, EMPHASIZED ITS DISCRETION AGAINST THE APPLICANT IN A MANNER WHICH DOES NOT REFLECT WELL ON THE QUASI JUDICIAL EXERCISE OF ITS DUTIES.

I DO NOT QUESTION THAT THE MAJORITY DECISION IS ON ALL FOURS WITH THE PREVIOUS BOARD JURISPRUDENCE AS CITED IN PARAGRAPH 6 OF THE MAJORITY DECISION. HOWEVER, I WOULD ASSUME THAT THE BOARD SHOULD STAND READY TO RE-EXAMINE ITS JURISPRUDENCE FROM TIME TO TIME, IN LIGHT OF THE McRUE REPORT AND ENSUING LEGISLATION. THE BOARD MIGHT CONSIDER THAT ITS PRESENT PROCEDURAL REQUIREMENTS AND JURISPRUDENCE ARE WEIGHTED

TOWARDS A FAVOURING OF THE INSTITUTIONAL INTERESTS OF EMPLOYERS AND TRADE UNIONS AT THE EXPENSE OF INDIVIDUAL CITIZENS AND EMPLOYEES. SUCH INDIVIDUALS, IN MY EXPERIENCE, RARELY UNDERSTAND THE PROCEDURAL COMPLEXITIES WITH WHICH THEY ARE CONFRONTED AT A HEARING. FOR WHATEVER REASONS, THE SPOKESMAN FOR THE APPLICANT HEREIN, PAUL TAYLOR, WAS NOT REPRESENTED BY COUNSEL AND FOR THE REASONS SET FORTH EARLIER IN MY DISSENT I WOULD HAVE BEEN INCLINED TO EXERCISE BOARD DISCRETION TO GRANT HIM AN ADJOURNMENT IN ORDER TO ENABLE HIM TO PRODUCE WITNESSES NECESSARY TO HIS CASE. IT SEEMS TO ME THAT SUCH A DISPOSITION OF THE INSTANT CASE WOULD BE IN ACCORD WITH NATURAL JUSTICE.

1801-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S. T. GOUDGE AND DOUG CONROY FOR THE APPLICANT; F. G. HAMILTON AND R. J. BELTON FOR THE RESPONDENT; T. E. ARMSTRONG, K. CUMMINGS AND C. LLOYD FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 26, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT THE NANTICOKE GENERATING STATION, NANTICOKE, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT SUPERVISORS AND FOREMEN, OFFICE STAFF AND TECHNICIANS. THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THE BOARD IN ITS DECISION DATED APRIL 27, 1972 DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.

2. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS MATTER. FOLLOWING EXTENSIVE HEARINGS, THE EXAMINER REPORTED TO THE BOARD ON JUNE 8, 1973 AND THE EXAMINER'S REPORT NOTES THE AGREEMENT OF THE PARTIES THAT A FURTHER EXAMINER'S REPORT AS APPEARS IN BOARD FILE 1742-71-R IN AN APPLICATION BY THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION FOR CERTAIN EMPLOYEES OF THE RESPONDENT BE ADMITTED INTO EVIDENCE IN THESE PROCEEDINGS.

3. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER A HEARING WAS HELD AT THE REQUEST OF THE PARTIES TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.

4. THE APPLICANT ARGUED THAT THE ISSUE TO BE DETERMINED BY THE BOARD WAS WHETHER THE UNIT PROPOSED BY THE APPLICANT FOR THE EMPLOYEES AT THE NANTICOKE GENERATING STATION IS A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING OR WHETHER THE ONLY APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IS THE PROVINCE-WIDE UNIT PRESENTLY REPRESENTED BY THE INTERVENER WHICH INCLUDES THE EMPLOYEES AT THE NANTICOKE GENERATING STATION. THE APPLICANT POINTED OUT THAT THERE ALREADY EXIST TWO EXCEPTIONS TO THE PROVINCE-WIDE UNIT REPRESENTED BY THE INTERVENER AND THEY ARE THE UNIT OF EMPLOYEES REPRESENTED BY THE APPLICANT AT THE J. CLARK KEITH GENERATING STATION IN WINDSOR AND THE R. L. HEARN GENERATING STATION IN TORONTO. IT IS NOTED THAT PERSONS CLASSIFIED AS ELECTRICAL CONTROL OPERATORS EMPLOYED AT THE KEITH AND HEARN GENERATING STATIONS ARE EXCLUDED FROM THE BARGAINING UNIT REPRESENTED BY THE APPLICANT AND ARE REPRESENTED BY THE INTERVENER. THERE ARE APPROXIMATELY 12,000 EMPLOYEES THROUGHOUT ONTARIO REPRESENTED BY THE INTERVENER AND APPROXIMATELY 450 EMPLOYEES OF THE RESPONDENT ARE COVERED BY THE COLLECTIVE AGREEMENTS WITH THE APPLICANT AT THE HEARN AND KEITH GENERATING STATIONS. THE EXAMINER'S REPORT REVEALS THAT THE RESPONDENT OPERATES A FULLY INTEGRATED SYSTEM WHICH, BECAUSE OF ITS SIZE AND COMPLEXITY, HAS BEEN DIVIDED INTO SEVEN REGIONS. EACH REGION IS DIVIDED INTO AREAS AND THERE ARE SIXTY-FIVE AREAS ACROSS THE PROVINCE IN WHICH ARE LOCATED SIXTY-EIGHT HYDRAULIC GENERATING STATIONS, SIX FOSSIL-FIRED THERMAL GENERATING STATIONS, THREE NUCLEAR-FIRED THERMAL GENERATING STATIONS, 15-20 GAS TURBINE GENERATING UNITS, 180 TRANSFORMER STATIONS, AND 720 DISTRIBUTING STATIONS.

5. THE COLLECTIVE AGREEMENTS THAT THE RESPONDENT HAS WITH THE APPLICANT AT THE HEARN AND KEITH GENERATING STATIONS HAVE PROVISIONS WHICH PROTECT THE SENIORITY OF THE EMPLOYEES EMPLOYED AT THOSE STATIONS. A NEW EMPLOYEE TRANSFERRED FROM A LOCATION OUTSIDE OF THE HEARN AND KEITH GENERATING STATIONS COMMENCES WORK WITH ZERO STATION SENIORITY. HOWEVER, UP UNTIL RECENT TIMES THE INTERVENER DID NOT OBJECT TO EMPLOYEES BEING TRANSFERRED FROM EITHER HEARN OR KEITH GENERATING STATIONS INTO THE BARGAINING UNIT REPRESENTED BY THE INTERVENER WITH THEIR FULL SENIORITY. HOWEVER, BECAUSE OF PROBLEMS THAT HAVE ARISEN, THE INTERVENER HAS INSISTED THAT ITS COLLECTIVE AGREEMENT WITH THE RESPONDENT INCLUDE THE FOLLOWING SENIORITY PROVISIONS: "WHEN FILLING VACANCIES IN THE OHEU UNIT, PRIMARY CONSIDERATION WILL BE GIVEN TO QUALIFIED OHEU MEMBERS BEFORE SELECTIONS ARE CONSIDERED OUTSIDE THE OHEU JURISDICTION". THE EXISTENCE OF SUCH A PROVISION WOULD IMPEDE THE TRANSFER OF EMPLOYEES FROM THE APPLICANT'S UNITS TO THE UNIT REPRESENTED BY THE INTERVENER.

6. THE EVIDENCE FURTHER ESTABLISHED THAT BECAUSE OF THE RAPID GROWTH IN THE RESPONDENT'S OPERATIONS BOTH AT NANTICOKE AND ELSEWHERE, THE RESPONDENT IS REQUIRED TO RECRUIT TRAINEES AND APPRENTICES WHO ARE TAKEN INTO A COMMON POOL WITH TRAINING DONE AT THE MOST CONVENIENT GENERATING STATION. WHEN TRAINING IS COMPLETED SUCH EMPLOYEES MAY BE SENT TO OTHER STATIONS WHERE VACANCIES EXIST. THE RESPONDENT MAKES USE OF TRAINING FACILITIES TO PROVIDE MANPOWER RESOURCES TO COVER THE REQUIREMENTS FOR NEW STATIONS AND ALSO TO FILL CONSEQUENTIAL VACANCIES WHICH WILL OCCUR IN EXISTING STATIONS DUE TO PROMOTIONS TO NEW STATIONS

THAT ARE BUILT. THE STAFFING REQUIREMENTS OF THE RESPONDENT REQUIRE A LONG-TERM TRAINING PROGRAM AND FREE MOBILITY BETWEEN GENERATING STATIONS.

7. IN SUPPORT OF ITS ARGUMENT THAT THE EMPLOYEES AT THE NANTICOKE GENERATING STATION COMPRISE AN APPROPRIATE BARGAINING UNIT, THE APPLICANT TOOK THE POSITION THAT SECTION 3 OF THE LABOUR RELATIONS ACT WAS A VITAL BACK-DROP UNDER WHICH THE BOARD OUGHT TO EXERCISE ITS JURISDICTION UNDER SECTION 6(1) OF THE ACT. IN SUPPORT OF ITS ARGUMENT THE APPLICANT RELIED UPON THE DECISIONS IN THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE, OLRB MONTHLY REPORT, JULY 1970, P. 430, AND THE CASES THEREIN REFERRED TO. IN THAT CASE THE BOARD STATED:

19. IN FINDING APPROPRIATE BARGAINING UNITS THE BOARD MUST ALSO BE CAUTIOUS THAT ITS DETERMINATION AS TO WHAT IS APPROPRIATE WILL NOT IMPEDE THE RIGHT OF SELF-ORGANIZATION GUARANTEED IN SECTION 3 OF THE LABOUR RELATIONS ACT. THE NATIONAL LABOUR RELATIONS BOARD IN THE UNITED STATES HAS RECOGNIZED IN CERTAIN CASES THAT ITS DETERMINATION OF APPROPRIATE BARGAINING UNITS HAS "OPERATED TO IMPEDE THE EXERCISE BY EMPLOYEES ... OF THEIR RIGHTS OF SELF-ORGANIZATION ..." SAVON-DRUGS, INC. 138 NLRB 1032 (1961); SEE ALSO QUAKER CITY LIFE INS. CO., 134 NLRB 960 (1961). WHILE GREAT WEIGHT MUST BE GIVEN TO PRIOR CASES DEALING WITH SIMILAR SITUATIONS, THOSE CASES ARE NOT DISPOSITIVE OF THE ISSUE IN ANY GIVEN CASE. BARGAINING UNIT DETERMINATION REQUIRES A CASE BY CASE REVIEW OF THE FACTS THAT THIS IS COMPELLED BY THE WORKING OF SECTION 6(1) WHICH PROVIDES THAT THE BOARD "UPON AN APPLICATION ... SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, ...".

8. THE APPLICANT ALSO RELIED UPON THE DECISION OF THE BOARD IN THE TELE-DIRECT LTD. CASE, OLRB MONTHLY REPORT, AUGUST 1971, P. 490, WHEREIN THE BOARD PERMITTED THE APPLICANT TO ORGANIZE THE EMPLOYEES IN ONE MUNICIPALITY WHICH WERE AT THAT TIME REPRESENTED BY AN INCUMBENT UNION IN A BARGAINING UNIT COVERING MORE THAN ONE MUNICIPALITY.

9. THE APPLICANT REQUESTED THE BOARD TO FOLLOW ITS DECISION IN AN APPLICATION IT HAD MADE FOR EMPLOYEES OF THE RESPONDENT AT ITS LAKEVIEW GENERATING STATION, OLRB MONTHLY REPORT, MAY 1969, P. 169. THAT DECISION READS IN PART AS FOLLOWS:

6. THERE ARE OTHER FACTORS THAT WOULD MILITATE AGAINST SUCH A FINDING WHICH WOULD RESULT IN THE PARTIAL FRAGMENTATION OF THE BARGAINING UNIT CURRENTLY REPRESENTED BY THE INTERVENER. WHILE THE BOARD USUALLY ATTEMPTS

TO AVOID THE FRAGMENTATION OF SUBSISTING BARGAINING UNITS, IT IS TO BE NOTED THAT IT IS NOT THE BOARD'S USUAL PRACTICE TO FIND THAT AN APPROPRIATE BARGAINING UNIT WOULD BE ALL EMPLOYEES IN ONTARIO. MOST CERTAINLY, ANY ARGUMENTS AGAINST FRAGMENTATION OF BARGAINING UNITS ARE SERIOUSLY WEAKENED, IF NOT DESTROYED, BY THE FACT THAT THE APPLICANT CURRENTLY BARGAINS ON BEHALF OF EMPLOYEES AT TWO GENERATING STATIONS WHICH HAD BEEN SEVERED FROM AN ONTARIO-WIDE BARGAINING UNIT. WHILE THESE GENERATING STATIONS ARE MUCH SMALLER THAN THE LAKEVIEW GENERATING STATION, THIS FACT DOES NOT DESTROY THE PRINCIPLE OF FRAGMENTATION WHICH HAS BEEN ESTABLISHED. ALTHOUGH EMPLOYEES MAY BE TRANSFERRED ON A PERMANENT BASIS FROM TIME TO TIME TO STAFF NEW GENERATING STATIONS, IT SHOULD BE NOTED THAT THERE WAS NO EVIDENCE OF A DAY-TO-DAY INTERCHANGE OF EMPLOYEES BETWEEN GENERATING STATIONS.

8. THE CONFLICTING FACTORS WHICH ARE REFERRED TO ABOVE ARE NOT READILY RESOLVED BY ANY OVER-RIDING CONSIDERATION OR BOARD POLICY. AN ADDITIONAL FACTOR WHICH THE BOARD MAY TAKE INTO CONSIDERATION IN DETERMINING THE APPROPRIATENESS OF A BARGAINING UNIT IS THE WISHES OF THE EMPLOYEES CONCERNED. A REPRESENTATION VOTE HAS ALREADY BEEN TAKEN IN THIS CASE WHEREIN THE EMPLOYEES CONCERNED WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHES TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT OR THE INTERVENER. SINCE IT WOULD BE READILY APPARENT THAT IF THE EMPLOYEES CHOSE TO BE REPRESENTED BY THE APPLICANT THEY WOULD THEREBY ELECT TO BARGAIN SEPARATELY FROM THE OTHER EMPLOYEES IN THE ONTARIO-WIDE BARGAINING UNIT REPRESENTED BY THE INTERVENER, THE RESULTS, OF THE REPRESENTATION VOTE ALREADY CONDUCTED WOULD ACCORDINGLY TEND TO INDICATE THE EMPLOYEES' WISHES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS CASE. IN VIEW OF THE CONFLICTING FACTORS REFERRED TO, THE BOARD IS OF OPINION THAT IT WOULD BE DESIROUS TO ASCERTAIN THE WISHES OF THE EMPLOYEES AS INDICATED IN THE PRE-HEARING REPRESENTATION VOTE IN ORDER TO ASSIST THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT, TO MAKE A DETERMINATION AS TO WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS A UNIT WHICH WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING IN ALL THE CIRCUMSTANCES IN THIS CASE.

10. THE APPLICANT ACCORDINGLY TOOK THE POSITION THAT IF THE BOARD IS UNABLE TO DETERMINE WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE ON THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT IT OUGHT TO DETERMINE THE WISHES OF THE EMPLOYEES AS WOULD BE INDICATED IN THE RESULTS OF THE PRE-HEARING REPRESENTATION VOTE CONDUCTED IN THIS MATTER AND THE APPLICANT THEREFORE REQUESTED THE BOARD TO COUNT THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE.

11. IT APPEARS FROM ALL THE EVIDENCE IN THIS CASE THAT ALTHOUGH MANY OF THE FACTORS WHICH THE BOARD CONSIDERED IN ARRIVING AT ITS DECISION IN THE LAKEVIEW CASE REFERRED TO ABOVE ARE PRESENT IN THIS CASE, OTHER FACTORS ARE PRESENT IN THIS CASE WHICH WERE NOT BEFORE THE BOARD AT THE TIME IT ARRIVED AT ITS DECISION IN THE LAKEVIEW CASE. IN ADDITION TO THE PROBLEMS RELATING TO THE TRANSFER OF EMPLOYEES BECAUSE OF THE SENIORITY PROVISIONS CONTAINED IN THE APPLICANT'S BARGAINING UNITS AND INSISTED UPON BY THE INTERVENER IN ITS RECENT BARGAINING WITH THE RESPONDENT FOR A RENEWAL OF ITS COLLECTIVE AGREEMENT, THERE IS EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE WHICH WAS APPARENTLY NOT PRESENT IN THE LAKEVIEW CASE CONCERNING THE DAY-TO-DAY INTERCHANGE OF EMPLOYEES BETWEEN GENERATING STATIONS. WHILE THERE WAS NO SUCH EVIDENCE IN THE LAKEVIEW CASE, THE EXAMINER'S REPORT IN THE INSTANT CASE INDICATES THAT EMPLOYEES FROM OUTSIDE EACH GENERATING STATION ARE REGULARLY REQUIRED TO PERFORM MAINTENANCE WORK AT THE GENERATING STATIONS.

12. GENERALLY, THE EVIDENCE PRESENTED TO THE BOARD IN THE LAKEVIEW CASE IN 1969 DOES NOT APPEAR TO BE AS COMPREHENSIVE AS THE EVIDENCE PRESENTED IN THE INSTANT CASE. IT IS NOT SUGGESTED THAT ANY OF THE PARTIES WERE AT FAULT IN THE PRESENTATION OF THE LAKEVIEW CASE. QUITE OBVIOUSLY, THE PARTIES HAVE HAD CONSIDERABLE PRACTICE IN PREPARING FOR THE INSTANT CASE IN VIEW OF THE FACT THAT THEY NOT ONLY HAD THE EXPERIENCE GAINED IN PRESENTING THE LAKEVIEW CASE BUT ALSO HAD THE EXPERIENCE IN PRESENTING THEIR ARGUMENT IN A CASE INVOLVING THE BRUCE HEAVY WATER PLANT, BOARD FILE 1742-71-R, AS WELL AS IN A PENDING APPLICATION INVOLVING THE SAME PARTIES FOR THE AUXILIARY STEAM PLANT AT DOUGLAS POINT, BOARD FILE 1789-71-R. IN ADDITION, HOWEVER, THERE HAVE BEEN RAPID DEVELOPMENTS IN THE OPERATIONS OF THE RESPONDENT WHICH DID NOT EXIST AT THE TIME OF THE LAKEVIEW APPLICATION. WHATEVER THE REASONS, THE EVIDENCE IN THE INSTANT CASE IS DISTINGUISHABLE FROM THE EVIDENCE AS REPORTED IN THE BOARD'S DECISION IN THE LAKEVIEW APPLICATION.

13. HAVING CONSIDERED ALL THE EVIDENCE, WE FIND THAT THE EVIDENCE IN THE INSTANT CASE IS SUFFICIENTLY DIFFERENT FROM THE EVIDENCE IN THE LAKEVIEW CASE THAT WE ARE NOT PREPARED TO FOLLOW IT AND CAUSE THE BALLOTS TO BE COUNTED IN THIS MATTER. IT IS NOTED THAT THE BOARD HAD SUFFICIENT DOUBTS CONCERNING THE OBJECTIVE EVIDENCE PRESENTED IN THE LAKEVIEW CASE THAT IT LOOKED TO THE WISHES OF THE EMPLOYEES TO ASSIST IT IN MAKING ITS DETERMINATION. WHEN THE EMPLOYEES' WISHES WERE DETERMINED BY COUNTING THE BALLOTS, IT WAS FOUND THAT THE EMPLOYEES DID NOT SUPPORT THE APPLICANT AND THE BOARD ACCORDINGLY FOUND THAT THE UNIT PROPOSED BY THE APPLICANT WAS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. IF THE INSTANT CASE WERE

ON ALL FOURS WITH THE LAKEVIEW CASE, THE BOARD WOULD ACCORDINGLY HAVE TO FIND THAT THE UNIT PROPOSED BY THE APPLICANT IN THE INSTANT CASE IS LIKEWISE NOT APPROPRIATE FOR COLLECTIVE BARGAINING. HOWEVER, AS WE HAVE INDICATED ABOVE, THERE IS ADDITIONAL EVIDENCE IN THIS CASE WHICH WAS NOT PRESENT IN THE LAKEVIEW CASE. ALL OF SUCH ADDITIONAL EVIDENCE SUPPORTS THE CONTENTION OF THE RESPONDENT AND THE INTERVENER THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE APPLICANT'S ARGUMENT THAT SECTION 3 OF THE ACT SUPPORTS ITS CONTENTION THAT THE UNIT AT NANTICOKE IS AN APPROPRIATE BARGAINING UNIT IS NOT PERSUASIVE IN OUR VIEW. WHILE SECTION 3 OF THE ACT MAY HAVE AN INDIRECT BEARING ON THE DESCRIPTION OF A BARGAINING UNIT, IT HAS NO DIRECT BEARING ON THE EXERCISE OF THE BOARD'S JURISDICTION UNDER SECTION 6 OF THE LABOUR RELATIONS ACT. SECTION 3 DOES NOT GIVE EVERY PERSONS THE RIGHT TO A BARGAINING AGENT OF HIS OWN CHOICE. IF SUCH WERE THE CASE THE COLLECTIVE BARGAINING PROCEDURE CONTEMPLATED BY THE PREAMBLE OF THE LABOUR RELATIONS ACT WOULD BE NULLIFIED. EACH EMPLOYEE OR EACH GROUP OF LIKE-MINDED EMPLOYEES WOULD BE ENTITLED TO BE REPRESENTED BY THEIR OWN BARGAINING AGENT IF THE APPLICANT'S ARGUMENT WERE SUCCESSFUL. THIS WOULD RESULT IN CHAOS AND WOULD CREATE A FRAGMENTATION OF BARGAINING UNITS THAT WOULD BE IMPOSSIBLE TO ADMINISTER. THE FREEDOM ENUNCIATED BY SECTION 3 OF THE ACT PERMITS EMPLOYEES TO JOIN A TRADE UNION AND PARTICIPATE IN ITS LAWFUL ACTIVITIES. WHILE THIS MAY BE CONSISTENT WITH HAVING SUCH A TRADE UNION REPRESENT THE EMPLOYEE IN COLLECTIVE BARGAINING, IT IS NOT A GUARANTEE THAT MEMBERSHIP IN A TRADE UNION WILL ENSURE THAT THE TRADE UNION WILL BE THE EMPLOYEES' BARGAINING AGENT. IN MAKING ITS DETERMINATION UNDER SECTION 6(1) AS TO WHAT COMPRISES AN APPROPRIATE BARGAINING UNIT, THE BOARD DOES SO OBJECTIVELY WITHOUT REGARD TO WHICH UNION REPRESENTS THE EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT. ONCE A BARGAINING UNIT IS DETERMINED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, THE EMPLOYEES IN THAT BARGAINING UNIT, SUBJECT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, ARE FREE TO VOTE FOR ANY TRADE UNION THAT HAS SHOWN THAT IT REPRESENTS AT LEAST 35% OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THIS CONCEPT OF COLLECTIVE BARGAINING, A MAJORITY OF EMPLOYEES MUST CHOOSE THE SAME TRADE UNION TO REPRESENT ALL OF THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT.

15. THE FACTS OF THE INSTANT CASE ARE READILY DISTINGUISHABLE FROM THE FACTS IN THE TELE-DIRECT CASE REFERRED TO ABOVE. IN THE TELE-DIRECT CASE THE BOARD WAS ONLY CONCERNED WITH AN EMPLOYER'S OPERATIONS AT TWO LOCATIONS. IN THE INSTANT CASE WE FIND THAT THE RESPONDENT SERVICES ALL OF ONTARIO OUT OF APPROXIMATELY 1,000 LOCATIONS WHICH INCLUDE GENERATING STATIONS, TRANSFORMER STATIONS, AND DISTRIBUTING STATIONS. IF THE APPLICANT WERE SUCCESSFUL IN THE INSTANT APPLICATION, EACH MUNICIPALITY WHERE THE RESPONDENT OPERATES WOULD LIKEWISE COMPRISE AN APPROPRIATE BARGAINING UNIT. SUCH A MULTITUDE OF BARGAINING UNITS WOULD CREATE A SEVERE ECONOMIC BURDEN ON THE RESPONDENT AND IF THE BARGAINING AGENT FOR EACH BARGAINING UNIT INSISTED UPON THE SAME SENIORITY PROVISIONS AS THE APPLICANT ENJOYS AT THE KEITH AND HEARN GENERATING STATIONS, THE MOBILITY OF THE WORKFORCE WOULD BE SERIOUSLY IMPEDED AND THIS WOULD HAVE A DRAMATIC AND DETRIMENTAL EFFECT ON THE RESPONDENT'S TRAINING PROGRAM AND FUTURE GROWTH.

16. IN ADDITION TO THE ABOVE CONSIDERATIONS, THE BOARD HAS CONSIDERED THE RECENT DECISION IN THE BRUCE HEAVY WATER PLANT APPLICATION [1973] OLRB REP. P. 231. THE BOARD HAS FURTHER CONSIDERED THE DECISIONS IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, NOVEMBER 1966, P. 596, AND THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, NOVEMBER 1968, P. 802. IN EACH OF THE ABOVE CASES THE BOARD HAS REFUSED TO SPLIT OFF THE UNIT APPLIED FOR FROM THE PROVINCE-WIDE UNIT REPRESENTED BY THE INTERVENER.

17. HAVING CONSIDERED THE EVIDENCE IN THIS MATTER IN LIGHT OF THE DECISIONS ABOVE REFERRED TO, WE FIND THAT IN THE INTEREST OF GREATER LABOUR MOBILITY AND THE PRESERVATION OF THE SENIORITY RIGHTS OF EMPLOYEES WHO ARE TRANSFERRED FROM ONE SITE TO ANOTHER, THAT THE LARGER BARGAINING UNIT REPRESENTED BY THE INTERVENER OUGHT NOT TO BE DISTURBED. FINALLY, THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER WHICH COVERS IN EXCESS OF TWENTY YEARS WHEREIN THE INTERVENER HAS REPRESENTED EMPLOYEES OF THE RESPONDENT ON A PROVINCE-WIDE BASIS IS A FURTHER REASON FOR REFUSING TO FRAGMENT THE ESTABLISHED BARGAINING UNIT. THE FACT THAT THE APPLICANT OR ITS PREDECESSOR HAS REPRESENTED THE EMPLOYEES AT THE KEITH AND HEARN GENERATING STATIONS SINCE 1951 DOES NOT DETRACT FROM OUR FINDINGS IN THIS MATTER. WHILE THERE HAS BEEN TREMENDOUS GROWTH IN THE UNIT REPRESENTED BY THE INTERVENER, THE UNIT REPRESENTED BY THE APPLICANT HAS NOT EXPERIENCED SIMILAR GROWTH. IN MAKING THIS OBSERVATION WE ARE NOT CRITICIZING THE RESPECTIVE QUALITY OF REPRESENTATIONS PROVIDED BY EITHER TRADE UNION. HOWEVER, IN THE ABSENCE OF EVIDENCE WHICH WOULD INDICATE THAT THE INTERVENER HAS FAILED TO PROVIDE EQUAL REPRESENTATION TO EMPLOYEES AT THE VARIOUS LOCATIONS, WE ARE NOT PREPARED TO FRAGMENT THE UNIT REPRESENTED BY IT AT THIS TIME.

18. FOR THE ABOVE REASONS, WE FIND THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. WE FURTHER FIND THAT THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING FOR THE EMPLOYEES AT THE NANTICOKE GENERATING STATION IS THE PROVINCIAL UNIT REPRESENTED BY THE INTERVENER. HAVING REGARD TO ALL THE EVIDENCE, WE THEREFORE FIND THAT THE APPLICANT AT THE TIME THE APPLICATION WAS MADE HAD LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS IN THE BARGAINING UNIT WHICH WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS CASE.

19. THE APPLICATION OF THE APPLICANT IS THEREFORE DISMISSED.

20. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

3229-72-U: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000, CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: BRIAN DUNN, MURRAY BELL, JAMES BOLAN AND JOHN SIMPSON FOR THE COMPLAINANT; B.H. STEWART, R. ABBOTT, E. HOLDUP, J. MOROSO AND B.A. CRUIKSHAN FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 11, 1973.

. . .

2. IN THIS CASE THE COMPLAINANT ALLEGES THAT THE GRIEVOR, JOHN SIMPSON, WAS DISCHARGED FOR UNION ACTIVITY. THE FACTS LEADING TO HIS DISCHARGE ARE RELATIVELY SIMPLE AND ARE AS FOLLOWS: THE UNION WAS ON STRIKE AND THE GRIEVOR WAS PICKETING THE PLANT. THE GRIEVOR PURCHASED SOME VIALS OF TEAR GAS AND THREW A VIAL AT A TRUCK THAT WAS CROSSING THE PICKET LINE. THE VIAL BROKE AND THE DRIVER OF THE TRUCK WAS FRIGHTENED BECAUSE OF THE SUBSTANCE THAT GOT INTO HIS EYES, AND HE THEN SAW A NURSE AND WENT TO THE HOSPITAL TO BE TREATED.

3. THERE APPEARS TO BE NO DISPUTE ABOUT THESE FACTS AND COUNSEL FOR THE COMPLAINANT ADMITS THAT THE ACTION BY THE GRIEVOR WAS SERIOUS.

4. COUNSEL FOR THE UNION ARGUED QUITE FORCFULLY THAT THE GRIEVOR WAS SELECTED FOR DISCHARGE ON THE BASIS OF HIS UNION ACTIVITY. THE UNION CLAIMS THAT CERTAIN MEMORANDA WHICH WERE SENT TO PERSONNEL OFFICERS ABOUT STRIKE MISCONDUCT TOGETHER WITH THE DELAY IN DISCHARGING THE GRIEVOR WERE EVIDENCE FROM WHICH THE BOARD COULD DRAW AN INFERENCE THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY.

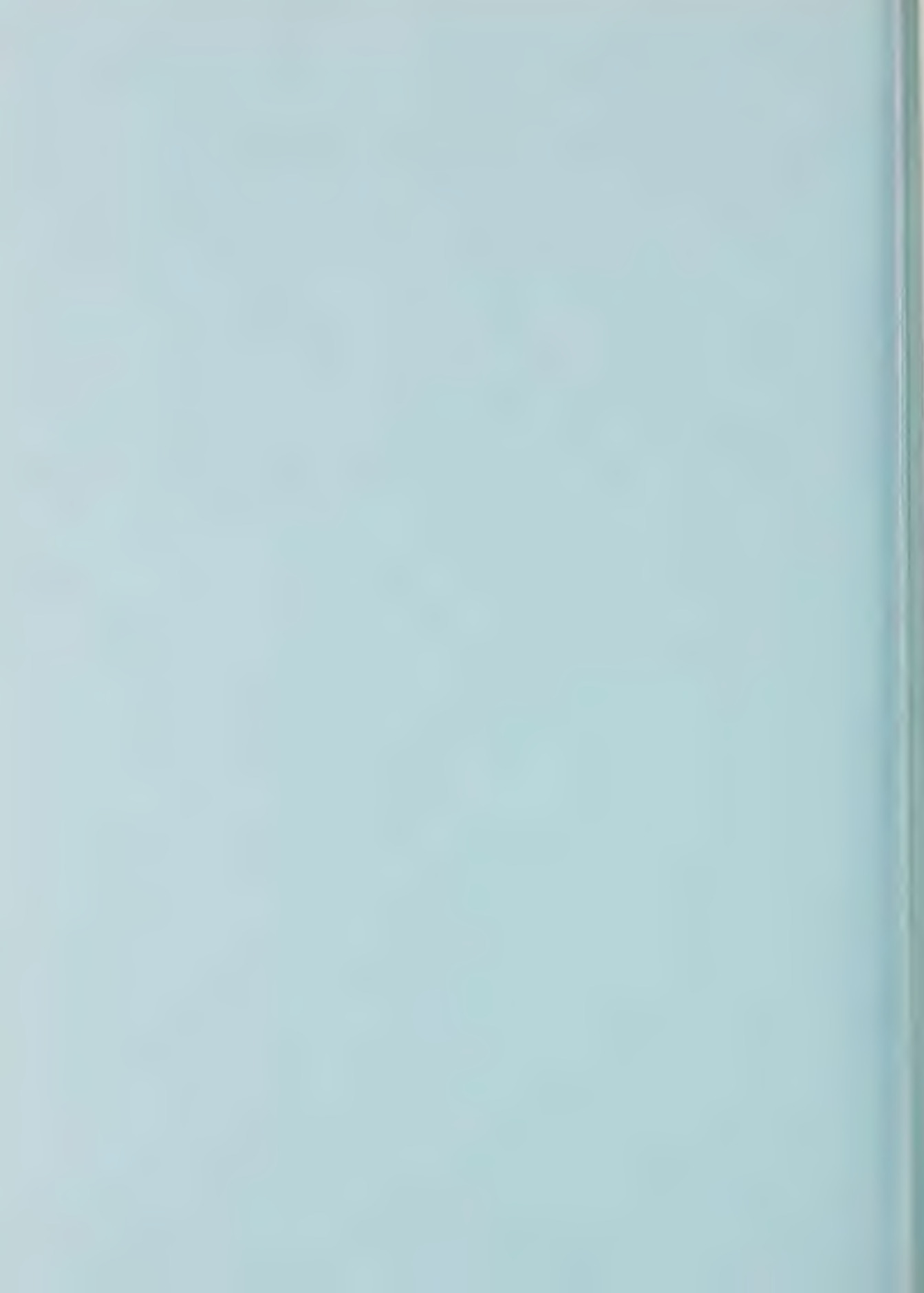
5. A REVIEW OF THE EVIDENCE DOES NOT INDICATE THAT SUCH WAS THE CASE. IT APPEARS THAT THE EMPLOYER WAS IN THE MIDST OF VERY SENSITIVE AND HARD BARGAINING AND WAS SEEKING TO THREAD A FINE LINE BETWEEN NOT ANTAGONIZING THE UNION DURING BARGAINING, WHILE AT THE SAME TIME TAKING A FIRM POSITION WITH STRIKERS WHO ENGAGED IN MISCONDUCT.

6. IN ARRIVING AT ITS DECISION, IT IS OBVIOUS THAT THE RESPONDENT'S DELAY WAS OCCASIONED BY AN ATTEMPT TO CO-ORDINATE ITS ACTIVITIES THROUGHOUT ONTARIO, AND TO TREAT SIMILAR SITUATIONS ON A SIMILAR BASIS. IN PART, THAT EXPLAINS THE REASON FOR THE DELAY.

7. WITH RESPECT TO THE VARIOUS MEMORANDA FILED AS EXHIBITS, IT IS OUR VIEW, THAT THESE EXHIBITS MUST BE CONSIDERED IN THE LIGHT OF THE EVENTS SURROUNDING THE STRIKE. DURING THE COURSE OF NEGOTIATIONS CERTAIN CONSIDERATIONS WERE GIVEN TO THE POSSIBILITY THAT DURING BARGAINING THE UNION MIGHT ATTEMPT TO NEGOTIATE ABOUT SPECIFIC DISCIPLINARY SITUATIONS

THAT HAD OCCURRED. THE COMPANY REALIZING THAT ITS DISCIPLINARY ACTION MIGHT BECOME PART OF THE NEGOTIATIONS, ATTEMPTED TO DOCUMENT THE INCIDENTS IN ANTICIPATION THAT THERE MIGHT BE SOME NEGOTIATION CONCERNING THOSE SITUATIONS, OR ALTERNATIVELY THAT THE DISCIPLINARY ACTION WOULD BE PROCEEDED WITH. WE RECONGIZE AS ONE OF THE INDUSTRIAL NORMS THAT DURING THE COURSE OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT INDIVIDUAL DISCIPLINARY ACTION MAY BE ONE OF THE ISSUES THAT IS NEGOTIATED AS PART OF THE SETTLEMENT.

8. IN THESE CIRCUMSTANCES WE DO NOT READ THE MEMORANDA OF THE COMPANY WHICH DISCUSSED STRIKE MISCONDUCT WITH A VIEW TO SETTLEMENT OR DISCIPLINARY ACTION AS BEING OUT OF THE ORDINARY AND AS A BASIS FOR FINDING THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY. WE FIND, IN ALL THE CIRCUMSTANCES, THAT THE GRIEVOR WAS SPECIFICALLY DISCHARGED FOR HIS CONDUCT IN THROWING THE VIAL; THERE APPEARS TO BE NO OTHER REASON FOR SELECTING THE GRIEVOR FOR DISCHARGE. THE DISCHARGE IN THESE CIRCUMSTANCES DOES NOT CONTRAVENE THE LABOUR RELATIONS ACT AND THE COMPLAINT IS ACCORDINGLY DISMISSED.



CASE LISTINGS SEPTEMBER 1973

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1973

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

3210-72-R: MECHANICAL CONTRACTORS ASSOCIATION NIAGARA (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 666 (RESPONDENT) V. HOUSING AND URBAN DEVELOPMENT ASSOCIATION OF NIAGARA (INTERVENER).

UNIT: "ALL EMPLOYERS OF PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES AND WELDERS FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE TOWNSHIPS OF DUNN, CANBOROUGH, SHERBROOKE AND MOULTON IN THE COUNTY OF HALDIMAND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL AND THE RESIDENTIAL SECTORS OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 477.

3490-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CANADIAN INTERURBAN PROPERTIES LIMITED (RESPONDENT) V. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION, (N.C.C.L.) (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1 AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2." (31 EMPLOYEES IN THE UNIT). (... FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT BUILDING SUPERINTENDENTS AND ASSISTANT BUILDING SUPERINTENDENTS IN THE COMMERCIAL AREA OF THE RESPONDENT'S PROPERTY MANAGEMENT DIVISION EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE EXCLUDED FROM THE BARGAINING UNIT.).

3733-73-R: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPERS LIMITED) (RESPONDENT) V. SUDBURY TYPOGRAPHICAL UNION, LOCAL 846 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE EDITORIAL AND NEWS DEPARTMENT OF THE RESPONDENT IN THE CITY OF SUDBURY, WHO REGULARLY WORK LESS THAN 24 HOURS PER

WEEK SAVE AND EXCEPT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3815-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION No. 911 (APPLICANT) V. THE TOWNSHIP OF MALDEN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MALDON, SAVE AND EXCEPT THE CLERK TREASURER, THE ROAD SUPERINTENDENT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 476.

3923-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NU-WOOD PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (22 EMPLOYEES IN THE UNIT).

3977-73-R: NURSES' ASSOCIATION JOHN NOBLE HOME (APPLICANT) V. JOHN NOBLE HOME (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT BRANTFORD ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT THE DIRECTOR OF NURSING AND PERSONS ABOVE THE RANK OF DIRECTOR OF NURSING AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

3978-73-R: NURSES' ASSOCIATION WELLAND COUNTY GENERAL HOSPITAL (APPLICANT) V. WELLAND COUNTY GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT WELLAND ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (228 EMPLOYEES IN THE UNIT).

4018-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORDEX EXPLOSIVES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OTTO TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4042-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. WILLIAM H. RORER (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF CHINGUACOUSY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, CHEMISTS AND LABORATORY TECHNICIANS, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 483.

4079-73-R: INTERNATIONAL LADIES' GARMENT WORKERS' UNION LOCAL 199 (APPLICANT) V. LUCKY LEGS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ALEXANDRIA, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE STAFF." (110 EMPLOYEES IN THE UNIT).

4116-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. SARNIA INSPECTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF SARNIA AND METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THE CIRCUMSTANCES OF THIS APPLICATION).

4117-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. CANADIAN NON DESTRUCTIVE TESTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

4119-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. INDU-TEST INSPECTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

4132-73-R: SERVICE EMPLOYEES UNION LOCAL 268, AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O. & C.L.C. (APPLICANT) V. THE LADY DUNN GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE LADY DUNN GENERAL HOSPITAL, WAWA, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4158-73-R: SERVICE EMPLOYEES UNION, LOCAL 210, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE RELIGIOUS HOSPITALLERS OF HOTEL DIEU OF ST. JOSEPH OF THE DIOCESE OF LONDON (RESPONDENT).

UNIT: "ALL LAY OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONFIDENTIAL SECRETARIES TO THE FOLLOWING: ADMINISTRATOR; ASSISTANT ADMINISTRATOR; COMPTROLLER; AND DIRECTOR OF PERSONNEL; ONE SECRETARY TO EACH OF THE FOLLOWING: DIRECTOR OF NURSING SERVICES; DIRECTOR OF SOCIAL SERVICES; CHIEF OF PSYCHIATRY; AND HEALTH AND INFECTION CONTROL OFFICER; RECEIVER, DRIVER, ADMITTING OFFICERS, ACCOUNTANT, PAYROLL PERSONNEL, OFFICE SERVICES TECHNICIAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, PERSONS COVERED BY A CERTIFICATE ISSUED TO SERVICE EMPLOYEES UNION, LOCAL 210, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C., REGARDING LAY EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MEDICAL LABORATORIES AND RADIOLOGY DEPARTMENTS, WHICH CERTIFICATE IS DATED AT TORONTO, THE 17TH DAY OF JANUARY, 1973, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE NURSES' ASSOCIATION HOTEL-DIEU OF ST. JOSEPH, BETWEEN THE RESPONDENT AND SERVICE EMPLOYEES UNION, LOCAL 210, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. AND BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS." (124 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4173-73-R: GRAND RIVER DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WALTSON PROPERTIES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4177-73-R: LOCAL UNION #636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. MILTON HYDRO-ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAMME." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4197-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MASTICO INDUSTRIES LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

4199-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 911, A.F.L.-C.I.O. C.L.C. (APPLICANT) V. AMHERSTBURG, ANDERDON AND MALDEN WATER POLLUTION CONTROL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT THE CLERK ADMINISTRATOR, PERSONS ABOVE THE RANK OF CLERK ADMINISTRATOR AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON CLASSIFIED AS PLANT LEADER IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.).

4209-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES GLAZIERS LOCAL UNION 1819 (APPLICANT) V. HILARY BYRNE GLASS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO." (8 EMPLOYEES IN THE UNIT).

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4213-73-R: HOTELS, CLUBS, RESTAURANTS & TAVERNS EMPLOYEES' UNION, LOCAL 261 (APPLICANT) V. THE LAURENTIEN TOWERS APARTMENT HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT MANAGER, ASSISTANT MANAGER, SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

4263-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN THE TOWNSHIP OF VESPRE, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, BAKERY MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (75 EMPLOYEES IN THE UNIT).

4272-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4274-73-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. MODERN BUILDING CLEANING A DIVISION OF DUSTBANE ENTERPRISES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT QUEENSWAY GENERAL HOSPITAL AT 150 SHERWAY DRIVE, ISLINGTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

4283-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. W. G. GALLAGHER CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSLOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4287-73-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. MOLSON'S BREWERY (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE ANCHOR ROOM AT 640 FLEET STREET WEST IN THE MUNICIPALITY OF TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4288-73-R: SOUTH WINDS DEVELOPMENT CO. LIMITED, EMPLOYEES ASSOCIATION (APPLICANT) V. SOUTH WINDS DEVELOPMENT CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

4289-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. MOORE DRY KILN COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4290-73-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CERTIFIED AIR CONTROLERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

4292-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. T. J. REGAN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MOORE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

4294-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. P. C. DROP FORGINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND HIGHWAY TRUCK DRIVERS OPERATING LEASED TRUCKS." (59 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES AND HOT INSPECTORS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

4301-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. SUPERIOR DODGE CHRYSLER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SERVICE SALESMEN,

OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4302-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. CANRON LIMITED, PIPE DIVISION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS CHERRY STREET PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF INSPECTOR, PURCHASING AGENT, PRODUCTION CONTROL SUPERVISOR, QUALITY CONTROL SUPERVISOR, OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

4313-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1081 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4314-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 628 (APPLICANT) V. COMSTOCK INTERNATIONAL (RESPONDENT).

UNIT: "ALL PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES, PIPEFITTERS AND PIPE FITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

4318-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 (APPLICANT) V. W. G. GALLAGHER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4319-73-R: INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRONWORKERS LOCAL #765 (APPLICANT) V. J & J INSTALLERS Co. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT WELDERS WORKING AT THE IRONWORKING TRADE ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.).

4323-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1081 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

4333-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ERBA STEEL LTD. (RESPONDENT).

UNIT: "ALL WELDERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

4340-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. REGENT CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4341-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. DEER MINE SERVICES LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

4344-73-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. SCARBOROUGH SHOPPING CENTRE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 300 BOROUGH DRIVE, SCARBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT INFORMATION CLERKS AND SHOPPING CART RENTAL CLERKS DO NOT SHARE A COMMUNITY OF INTEREST WITH THE EMPLOYEES IN THE BARGAINING UNIT AND ARE EXCLUDED FROM THE BARGAINING UNIT IN THIS MATTER.).

4353-73-R: TEXTILE WORKERS UNION OF AMERICA CLC-AFL-CIO (APPLICANT) V. PELLON CHEMOTEXTILES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN CORNWALL, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

4367-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HI-WAY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, TRUCK DRIVERS AND ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

4374-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1081 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

4375-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4379-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4389-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. POLLOCK & MCGIBBON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4398-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BELLAI BROTHERS LTEE. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

4401-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. REGENT CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4402-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. COSMIC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3479-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. CANADA GLAZED PAPERS LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERINTENDENTS, MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, SALES REPRESENTATIVES, RESEARCH AND DEVELOPMENT DIRECTOR, SECRETARY TO PERSONNEL MANAGER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (54 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS SALES REPRESENTATIVES ARE ENGAGED IN THE SELLING OF COMPANY PRODUCTS IN THE FILED. ...).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		48
NUMBER OF PERSONS WHO CAST BALLOTS	24	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

4239-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. A NEWMAN & CO. LIMITED (RESPONDENT) V. CANADIAN STEEL WORKERS UNION, LOCAL 165, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY POLICE AND WATCHMEN." (87 EMPLOYEES IN THE UNIT). (HAVING REGARD FOR THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		76
NUMBER OF PERSONS WHO CAST BALLOTS	70	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	62	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	5	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

2719-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. NEWMARCH MECHANICAL LIMITED (RESPONDENT) V. THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF NO TRADE UNION	0	

3329-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHEBANDOWAN MINE AND MILL OPERATION, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS EMPLOYED IN THE MINE ENGINEERING DEPARTMENT, MINE EXPLORATION DEPARTMENT, ADMINISTRATION DEPARTMENT, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION OF DRYMAN IS INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		155
NUMBER OF PERSONS WHO CAST BALLOTS	117	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	76	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	37	

3412-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MORTLOCK CONSTRUCTION (1963) LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1450 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF VICTORIA AND PETERBOROUGH, INCLUDING THE MUNICIPALITIES CONTAINED THEREIN, AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	0	

3622-73-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED, OPERATING AS BUTCHER BOY OK ECONOMY MARKETS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN THE VILLAGE OF LAMBETH, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

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3867-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ECHLIN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 500 CARLINGVIEW DRIVE, METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (107 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST		100
NUMBER OF PERSONS WHO CAST BALLOTS	91	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	51	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	38	

3977-73-R: NURSES' ASSOCIATION JOHN NOBLE HOME (APPLICANT) V. JOHN NOBLE HOME (RESPONDENT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT BRANTFORD ENGAGED IN A NURSING CAPACITY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT DIRECTOR OF NURSING AND PERSONS ABOVE THE RANK OF DIRECTOR OF NURSING." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

3750-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 773 DON MILLS ROAD (NORTH AMERICAN LIFE TOWER) IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE AND SALES STAFF, SECURITY OFFICERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

3861-73-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. YORK UNIVERSITY (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #2). (2 EMPLOYEES).

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3906-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GLYSINSKI ENTERPRISES LTD. (RESPONDENT). (9 EMPLOYEES).

3929-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. POWER PLASTICS & ALUMINUM LTD. (RESPONDENT). (2 EMPLOYEES).

3941-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT). (3 EMPLOYEES).

4089-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NORONT CONSTRUCTION AND MAINTENANCE (RESPONDENT). (1 EMPLOYEE).

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4097-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SEAL TOP PAVING & CONSTRUCTION LTD. (RESPONDENT). (41 EMPLOYEES).

4099-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HAMMOND MANUFACTURING COMPANY LIMITED (RESPONDENT) V. HAMMOND EMPLOYEES ASSOCIATION COMMITTEE (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (490 EMPLOYEES).

4109-73-R: THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. WACKENHUT OF CANADA LIMITED (RESPONDENT). (5 EMPLOYEES).

4157-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. SAINLEE INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (81 EMPLOYEES).

4220-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. TORONTO ZENITH CONTRACTING LIMITED (RESPONDENT). (41 EMPLOYEES).

4237-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES GLAZIERS - LOCAL UNION 1819 (APPLICANT) V. ATLANTIC GLASS & MIRROR LTD. (RESPONDENT). (7 EMPLOYEES).

4295-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. BENTALL CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

4305-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUR-WALL CONSTRUCTION LIMITED (RESPONDENT). (48 EMPLOYEES).

4317-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. BAY WINDOW CLEANERS (RESPONDENT). (2 EMPLOYEES).

4390-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. TORONTO ZENITH CONTRACTING LTD. (RESPONDENT). (29 EMPLOYEES).

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4423-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUR-WALL CONCRETE FORMING (RESPONDENT). (81 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1801-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.U.P.E., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT THE NANTICOKE GENERATING STATION, NANTICOKE, SAVE AND EXCEPT SHIFT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT SUPERVISOR AND FOREMAN, OFFICE STAFF AND TECHNICIANS." (117 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	108
NUMBER OF PERSONS WHO CAST BALLOTS	98
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	90
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	4
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES DO NOT APPEAR ON VOTERS' LIST	4

BALLOTS BOX SEALED

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4072-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. W. C. WOOD COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SUPERVISING STOCK KEEPER, SALARIED SERVICEMEN, PERSONS EMPLOYED IN RESEARCH AND DEVELOPMENT, PLANT NURSE, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAM." (320 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	302
NUMBER OF PERSONS WHO CAST BALLOTS	278
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	136
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	141

4178-73-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 322 (APPLICANT) V. MORRISON LAMOTHE FOODS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE BAKERY DIVISION OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF, SALES DEPARTMENT PERSONNEL, GARAGE STAFF AND TRANSPORT DRIVERS, RETAIL STORE AND RETURNED GOODS EMPLOYEES, CAFETERIA STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (219 EMPLOYEES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCTION CONTROL AND QUALITY CONTROL EMPLOYEES ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE CLASSIFICATION OF OFFICE AND CLERICAL STAFF AND THAT DRIVER-

SALESMEN ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE CLASSIFICATION OF SALES DEPARTMENT PERSONNEL.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		126
NUMBER OF PERSONS WHO CAST BALLOTS	118	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	54	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	62	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3050-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. BEECHWOOD STEEL SUPPLY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT VANIER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

3909-73-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ARMBRO MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL YARD AND SHOP EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICING AND ASPHALT PRODUCTION AT THE RESPONDENT'S YARD IN LOT 11 CONCESSION 1 WEST IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT DISPATCHERS, SCALEMEN, CLERKS, TECHNICIANS, STOCK KEEPERS, OFFICE AND SALES STAFF, CAFETERIA STAFF, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (205 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	80
NUMBER OF PERSONS WHO CAST BALLOTS	74
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	38

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

1424-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. TRICON CONSTRUCTION CORPORATION (RESPONDENT). (14 EMPLOYEES).

4266-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) V. CORONET FURNITURE COMPANY (RESPONDENT). (38 EMPLOYEES).

4269-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. MARKIM WAREHOUSE CORPORATION (RESPONDENT). (35 EMPLOYEES).

4312-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. CROSS RIVER PRODUCTS CANADA LIMITED (RESPONDENT). (8 EMPLOYEES).

4321-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CENTURY MANOR (RESPONDENT). (17 EMPLOYEES).

4324-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT). (37 EMPLOYEES).

4325-73-R: INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRONWORKERS LOCAL 765 (APPLICANT) V. PRATT STEEL ERECTORS (RESPONDENT). (4 EMPLOYEES).

4326-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALEXANDER DOWNEY (RESPONDENT). (3 EMPLOYEES).

4357-73-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH S.E.I.U., A.F. OF L., CIO., C.L.C. (APPLICANT) V. NEW YORK WINDOW CLEANING COMPANY LIMITED (RESPONDENT). (4 EMPLOYEES).

4370-73-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. CHARLTON TRANSPORT LTD. (RESPONDENT). (19 EMPLOYEES).

4396-73-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. CHARLTON TRANSPORT LTD. (RESPONDENT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER). (21 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

4009-73-R: CORPORATION OF THE COUNTY OF PEEL (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HEALTH UNIT, SAVE AND EXCEPT SENIOR PUBLIC HEALTH INSPECTORS, ADMINISTRATIVE ASSISTANT II, DENTAL DIRECTOR AND PERSONS ABOVE THE RANK OF SENIOR PUBLIC HEALTH INSPECTOR, ADMINISTRATIVE ASSISTANT II AND DENTAL DIRECTOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING PROGRAM WITH RYERSON POLYTECHNICAL INSTITUTE AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE COUNTY OF PEEL AND THE NURSES ASSOCIATION PEEL COUNTY HEALTH UNIT." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS	27	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	7	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	20	

4032-73-R: CALVIN HUTCHINS (APPLICANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO INC. (RESPONDENT) V. THE UNIVERSITY OF GUELPH (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE UNIVERSITY OF GUELPH ENCOMPASSED IN THE BARGAINING UNIT AS DEFINED IN ARTICLE 3.01 OF THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE UNIVERSITY OF GUELPH, DATED THE 22ND DAY OF SEPTEMBER, 1971." (693 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS'		
LIST		699
NUMBER OF PERSONS WHO CAST BALLOTS	364	
BALLOTS SEGREGATED AND NOT COUNTED		
(AGREED BY PARTIES NOT ELIGIBLE)	3	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	37	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	322	

4077-73-R: STANLEY DIXON AND DOUGLAS MAWSON (APPLICANTS) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT) V. TOWNSHIP OF MCGILLIVRAY (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER, SAVE AND EXCEPT ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT, OFFICE AND CLERICAL STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	2

4182-73-R: HENRY NOVAK (APPLICANT) V. THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (RESPONDENT) V. DOW CHEMICAL OF CANADA, LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL PLANT GUARDS IN THE EMPLOY OF DOW CHEMICAL OF CANADA, LIMITED, AT SARNIA, SAVE AND EXCEPT SHIFT SERGEANTS, PERSONS ABOVE THE RANK OF SHIFT SERGEANT AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	10

4241-73-R: (GROUP SPOKESMAN) PAUL TAYLOR (APPLICANT) V. LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL CIO CLC) (RESPONDENT) V. NORANDA METAL INDUSTRIES LIMITED, FERGUS DIVISION (INTERVENER). (63 EMPLOYEES). (DISMISSED).

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4275-73-R: RONALD TUCKER (APPLICANT) V. TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (30 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

SEPTEMBER

4102-73-R: TEXTILE WORKERS UNION OF AMERICA (APPLICANT) V. HATHAWAY A DIVISION OF WARNACO OF CANADA LIMITED (RESPONDENT). (GRANTED).

4330-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FEDERATED GENCO LIMITED (RESPONDENT) V. FEDERAL UNION LOCAL 24712, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

4331-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WELLAND CHEMICAL OF CANADA LIMITED (RESPONDENT) V. FEDERAL UNION LOCAL 24712, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

4332-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TORONTO REFINERS & SMELTERS CO. (RESPONDENT) V. FEDERAL UNION LOCAL 24712, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

SEPTEMBER

4303-73-U: ARLINGTON CRANE SERVICE (APPLICANT) V. WILLIAM ARMSTRONG, JOE KORZAN ET AL (RESPONDENTS). (WITHDRAWN).

4364-73-U: GULF & WESTERN (CANADA) LIMITED (APPLICANT) V. OLINDO MALIZIA ET AL (RESPONDENTS). (GRANTED).

4405-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. UNITED PAPERWORKERS INTERNATIONAL UNION AND ITS LOCAL 74 AND ITS LOCAL 156 (RESPONDENTS). (WITHDRAWN).

4406-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION AND OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 421 (RESPONDENT). (WITHDRAWN).

4407-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION, AND ITS LOCAL 956 (RESPONDENTS). (WITHDRAWN).

4408-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. EMPLOYEES OF THE APPLICANT AT ESPANOLA, ONTARIO INCLUDING, BUT NOT LIMITED TO FRANK BEER, ARMAND DICAIRE, LAWRENCE DOUCETTE, CLARENCE GERRIOR, R. HAROLD WEATHERLEY, PERCY MCCALLUM, BRUCE RAMSEY AND RICHARD OWEN (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

SEPTEMBER

4096-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CORDS CANADA LTD. (RESPONDENT). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

2800-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF GREY (RESPONDENT). (WITHDRAWN).

3985-73-U: UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION (UAW) AND ITS LOCAL 636, WOODSTOCK, ONTARIO (APPLICANTS) V. THOMAS BUILT BUSES OF CANADA LIMITED (RESPONDENT). (GRANTED).

4232-73-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. HAND NURSING HOMES LIMITED (RESPONDENT). (DISMISSED).

4236-73-U: THE NEWSPAPER GUILD (APPLICANT) V. THE SUDBURY STAR (A DIVISION OF THOMSON NEWSPAPER LTD.) (RESPONDENT). (WITHDRAWN).

4265-73-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. VIBRAPIPE CONCRETE PRODUCTS LTD. (RESPONDENT). (GRANTED).

4310-73-U: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES GLAZIERS LOCAL UNION 1819 (APPLICANT) V. HILARY BYRNE GLASS LTD., RAY BYRNE AND LEAF JENSEN (RESPONDENTS). (WITHDRAWN).

4386-73-U: GULF & WESTERN (CANADA) LTD. (APPLICANT) V. OLINDO MALIZIA ET AL (RESPONDENTS). (WITHDRAWN).

4409-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. UNITED PAPERWORKERS, INTERNATIONAL UNION AND ITS LOCAL 156 (RESPONDENTS). (WITHDRAWN).

4410-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. UNITED PAPERWORKERS, INTERNATIONAL UNION AND ITS LOCAL 74 (RESPONDENTS). (WITHDRAWN).

4411-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. MR. P. H. WEATHERLEY (RESPONDENT). (WITHDRAWN).

4412-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. CLARENCE GERRIOR (RESPONDENT). (WITHDRAWN).

4413-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. LAWRENCE DOUCETTE (RESPONDENT). (WITHDRAWN).

4414-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. ARMAND DICAIRE (RESPONDENT). (WITHDRAWN).

4415-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. FRANK BEER (RESPONDENT). (WITHDRAWN).

4416-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. MR. RICHARD OWEN (RESPONDENT). (WITHDRAWN).

4417-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. MR. PERCY MCCALLUM (RESPONDENT). (WITHDRAWN).

4418-73-U: EDDY FOREST PRODUCTS LIMITED (APPLICANT) V. MR. BRUCE RAMSEY (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

SEPTEMBER

2992-72-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. INVERLEIGH CONSTRUCTION LIMITED AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (RESPONDENTS). (DISMISSED).

3229-72-U: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000, CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (DISMISSED).

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3408-72-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. G. TAMBLYN, LTD. (RESPONDENT). (WITHDRAWN).

3444-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (ONTARIO HUMANE SOCIETY) (RESPONDENT). (GRANTED).

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3577-72-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. G. TAMBLYN, LTD. (RESPONDENT). (WITHDRAWN).

3597-73-U: KENNETH BRADFORD RIGG (COMPLAINANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (RESPONDENT). (WITHDRAWN).

3598-73-U: UNITED INDUSTRIAL WORKERS LOC. 2A AFFILIATED WITH UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (COMPLAINANT) V. PACIFIC PLATING LIMITED (RESPONDENT). (DISMISSED).

3599-73-U: UNITED INDUSTRIAL WORKERS LOC. 2A AFFILIATED WITH UNITED BRICK AND CLAY WORKERS OF AMERICA AFL-CIO (COMPLAINANT) V. PACIFIC PLATING LIMITED (RESPONDENT). (DISMISSED).

3816-73-U: LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION, AFL-CIO (COMPLAINANT) V. LARRY'S HIDEAWAY HOTEL (RESPONDENT). (WITHDRAWN).

3881-73-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (COMPLAINANT) V. METCALFE FOODS OF CANADA LIMITED (RESPONDENT). (DISMISSED).

3926-73-U: LONDON AMBULANCE ATTENDANTS ASSOCIATION (COMPLAINANT) V. THAMES VALLEY AMBULANCE LIMITED (RESPONDENT). (DISMISSED).

3934-73-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, A.F.L., C.I.O., CLC. (COMPLAINANT) V. MUSKOKA DISTRICT HOME FOR THE AGED (RESPONDENT). (DISMISSED).

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3959-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (COMPLAINANT) V. C. CAPLAN LIMITED (RESPONDENT). (DISMISSED).

3967-73-U: WINSTON HART (COMPLAINANT) V. MISTER LEONARD LIMITED (RESPONDENT).

- AND -

3968-73-U: CASSILLA KNIGHT (COMPLAINANT) V. MISTER LEONARD LIMITED (RESPONDENT). (GRANTED).

4006-73-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. MANSONVILLE PLASTICS LTD. (RESPONDENT). (WITHDRAWN).

4047-73-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-CLC (COMPLAINANT) V. WILLIAM H. RORER (CANADA) LIMITED (RESPONDENT). (GRANTED).

4056-73-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 666 (COMPLAINANT) V. JANZEN PLUMBING & HEATING LIMITED (RESPONDENT). (WITHDRAWN).

4111-73-U: MICHAEL BANDI (COMPLAINANT) V. UNION OF LOCAL 199 UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA U.A.W. (RESPONDENT). (DISMISSED).

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4175-73-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. E.J. WRIGHT CENTRAL LIMITED (RESPONDENT). (WITHDRAWN).

4256-73-U: DOUGLAS PEDDLE (COMPLAINANT) V. UNITED PAPERWORKERS INTERNATIONAL UNION - LOCAL 433 (RESPONDENT). (WITHDRAWN).

4281-73-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (COMPLAINANT) V. WARNOCK HERSEY INTERNATIONAL LIMITED (RESPONDENT). (WITHDRAWN).

4404-73-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. AIR MASTER OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 39 DISPOSED OF DURING SEPTEMBER

4229-73-M: DONALD KEITH JOHNSON (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 167 (RESPONDENT TRADE UNION) V. CORPORATION OF THE CITY OF HAMILTON (RESPONDENT EMPLOYER). (WITHDRAWN).

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4382-73-M: RUSSEL BROTHERS LIMITED (EMPLOYER) V. UNITED STEEL WORKERS OF AMERICA (TRADE UNION). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING SEPTEMBER

3596-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1542 (APPLICANT) V. THE CORPORATION OF THE CITY OF WATERLOO (RESPONDENT). (DISMISSED).

4282-73-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, A.F. OF L. C.I.O., C.L.C. LOCAL 756 (APPLICANT) V. THE MONTEBELLO INN (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING
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4041-73-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #1140 (APPLICANT) V. THE TOWN OF TIMMINS HOME FOR THE AGED (GOLDEN MANOR) (RESPONDENT). (DISMISSED).

4052-73-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1321 (APPLICANT) V. RENFREW COUNTY BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

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4346-73-M: HASHMAN CONSTRUCTION LIMITED (EMPLOYER) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION). (DISMISSED).

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3709-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NORM ROSS PLASTERING LIMITED (RESPONDENT) V. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER). (REQUEST DENIED).

3710-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TURNER & SON LTD. (RESPONDENT) V. LOCAL 97 OF THE WOOD,

WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2). (REQUEST DENIED).

3711-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. NU-DIMENSION DRYWALL (RESPONDENT) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER). (REQUEST DENIED).

3712-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. INSERVAC LTD. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENER #1) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #2). (REQUEST DENIED).

3713-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ESSON PLASTERING (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #2). (REQUEST DENIED).

3714-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. FLATLEY AND KAY LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #2). (REQUEST DENIED).

3735-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. J. P. GALLAGHER CO. LTD. (RESPONDENT) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2). (REQUEST DENIED).

3736-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. A. V. HALLAM LTD. (RESPONDENT) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #1) v. INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, LOCAL UNION 1891 (INTERVENER #2) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #3). (REQUEST DENIED).

3737-73-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. GALLAGHER BROS. & SMITH (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #1) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #2). (REQUEST DENIED).

3775-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. LATH-PLAST. LTD. (RESPONDENT) v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER). (REQUEST DENIED).

4046-73-R: CANADIAN UNION OF INDUSTRIAL EMPLOYEES (APPLICANT) V. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER). (REQUEST DENIED).

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APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

3743-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. CORDS CANADA, LTD. (RESPONDENT). (REQUEST DENIED).

STATISTICAL TABLES 2ND QUARTER AND 1ST 6 MONTHS OF FISCAL YEAR 1973-74

TABLE I

APPLICATIONS AND COMPLAINT RECEIVED BY THE ONTARIO LABOUR
RELATIONS BOARD

	NUMBER FILED		
	2ND QUARTER ¹ FISCAL YEAR 1973-74	1ST 6 MONTHS FISCAL YEAR	
		1973-74	1972-73
I. CERTIFICATION	326	703	536
II. DECLARATION TERMINATING BARGAINING RIGHTS	16	29	31
III. DECLARATION OF SUCCESSOR STATUS	9	16	12
IV. DECLARATION THAT STRIKE UNLAWFUL	18	24	26
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	2	1
VI. CONSENT TO PROSECUTE	41	56	52
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	46	109	102
VIII. MISCELLANEOUS	<u>24</u>	<u>44</u>	<u>66</u>
TOTAL	481	983	826
	==	==	==

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	2ND QUARTER FISCAL YEAR 1973-74	1ST 6 MONTHS FISCAL YEAR	
		1973-74	1972-73
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	284	641	561

¹ JULY TO SEPTEMBER.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	2ND QUARTER	1ST 6 MONTHS	FISCAL YEAR
	FISCAL YEAR 1973-74	1973-74	1972-73
I. CERTIFICATION	297	655	505
II. DECLARATION TERMINATING BARGAINING RIGHTS	14	23	28
III. DECLARATION OF SUCCESSOR STATUS	20	29	11
IV. DECLARATION THAT STRIKE UNLAWFUL	16	23	22
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	3	-
VI. CONSENT TO PROSECUTE	29	55	60
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	57	123	119
VIII. MISCELLANEOUS	<u>17</u>	<u>29</u>	<u>68</u>
TOTAL	451	940	813
	==	==	==

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	2ND QUARTER	1ST 6 MTHS F.Y.		2ND QUARTER	1ST 6 MTHS F.Y.	
	FISCAL YEAR	FISCAL YEAR		FISCAL YEAR	FISCAL YEAR	
	1973-74	1973-74	1972-73	1973-74	1973-74	1972-73
I. <u>CERTIFICATION</u>						
GRANTED	198	444	338	4923	12036	9245
DISMISSED	65	141	113	3477	6273	6170
WITHDRAWN	<u>34</u>	<u>70</u>	<u>54</u>	<u>896</u>	<u>1713</u>	<u>1399</u>
TOTAL	297	655	505	9296	20022	16814
	==	==	==	==	==	==
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	9	13	17	846	927	424
DISMISSED	5	10	7	170	511	32
WITHDRAWN	<u>-</u>	<u>-</u>	<u>4</u>	<u>-</u>	<u>-</u>	<u>64</u>
TOTAL	14	23	28	1016	1438	520
	==	==	==	==	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
		FISCAL YEAR		
		1973-74	1973-74	1972-73
III. <u>DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED		2	2	4
DISMISSED		4	5	5
WITHDRAWN		<u>10</u>	<u>16</u>	<u>13</u>
TOTAL		16	23	22
		<u>=</u>	<u>=</u>	<u>=</u>
IV. <u>DECLARATION THAT LOCK-OUT</u>				
<u>UNLAWFUL</u>				
GRANTED		-	-	-
DISMISSED		1	3	-
WITHDRAWN		<u>=</u>	<u>=</u>	<u>=</u>
TOTAL		1	3	-
		<u>=</u>	<u>=</u>	<u>=</u>
V. <u>CONSENT TO PROSECUTE</u>				
GRANTED		2	8	13
DISMISSED		4	10	5
WITHDRAWN		<u>23</u>	<u>37</u>	<u>42</u>
TOTAL		29	55	60
		<u>=</u>	<u>=</u>	<u>=</u>
VI. <u>COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 79)</u>				
GRANTED		6	9	6
DISMISSED		21	44	44
WITHDRAWN		<u>30</u>	<u>70</u>	<u>69</u>
TOTAL		57	123	119
		<u>=</u>	<u>=</u>	<u>=</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

2ND QUARTER FISCAL YEAR	NUMBER OF VOTES	
	1ST 6 MONTHS FISCAL YEAR	
	1973-74	1972-73

CERTIFICATION AFTER VOTE*

PRE-HEARING VOTE	8	38	18
POST-HEARING VOTE	24	44	26
BALLOTS NOT COUNTED	-	-	2

DISMISSED AFTER VOTE

PRE-HEARING VOTE	7	21	18
POST-HEARING VOTE	10	18	33
BALLOTS NOT COUNTED	<u>1</u>	<u>2</u>	<u>2</u>
TOTAL	50	123	99
	<u>=</u>	<u>=</u>	<u>=</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

2ND QUARTER FISCAL YEAR	NUMBER OF VOTES	
	1ST 6 MONTHS FISCAL YEAR	
	1973-74	1972-73

*RESPONDENT UNION SUCCESSFUL	1	3	-
RESPONDENT UNION UNSUCCESSFUL	<u>7</u>	<u>8</u>	<u>9</u>
TOTAL	8	11	9
	<u>=</u>	<u>=</u>	<u>=</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. CANAC SHOCK ABSORBERS LIMITED v. CANADIAN ACME SCREW & GEAR LIMITED.....

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NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL v. OTTAWA GENERAL HOSPITAL v. CSAO NATIONAL (INC.) v. GROUP OF EMPLOYEES.....

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THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. MALETTE LUMBER (1969) LIMITED.....

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. CANAC SHOCK ABSORBERS LIMITED v. CANADIAN ACME SCREW & GEAR LIMITED.....

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DONALD G. GEBBIE AND J. MICHAEL LONGMOORE v. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED.....

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TERMINATION - S49(3) - EFFECT OF PAYMENT BY THE EMPLOYER OF APPLICANT'S COUNSEL FEE - WHETHER AN IMPACT ON THE TRUE AND VOLUNTARY WISHES OF EMPLOYEES - EFFECT OF PAYMENT MADE AFTER THE BOARD'S ORDER ISSUED - EFFECT ON FUTURE COLLECTIVE BARGAINING ISSUES - WHETHER THE BOARD TO REVOKE THE ORDER.

HILDA WAGNER v. SERVICE EMPLOYEES' UNION, LOCAL 210 v. THE CORPORATION OF THE COUNTY OF LAMBTON.....

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TIMELINESS - MEMBERSHIP EVIDENCE - PRACTICE - S92(2)(1) - EFFECT OF AN APPLICATION FOR LEAVE TO WITHDRAW UPON DISCOVERY OF DEFECTIVE MEMBERSHIP EVIDENCE - WHETHER THE BOARD WILL RAISE A BAR WITH RESPECT TO SUBSEQUENT APPLICATIONS FOR CERTIFICATION - WHETHER THE APPROPRIATE TIME TO RAISE THE QUESTION IS WHEN A SUBSEQUENT APPLICATION IS MADE.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED v. GROUP OF EMPLOYEES.....

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3229-72-U: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000, CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND C. HODGES.

APPEARANCES AT THE HEARING: BRIAN DUNN, MURRAY BELL, JAMES BELAN AND JOHN SIMPSON FOR THE COMPLAINANT; B.H. STEWART, R. ABBOTT, E. HOLDUP, J. MOROSO AND B.A. CRUIKSHAN FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 11, 1973.

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2. IN THIS CASE THE COMPLAINANT ALLEGES THAT THE GRIEVOR, JOHN SIMPSON, WAS DISCHARGED FOR UNION ACTIVITY. THE FACTS LEADING TO HIS DISCHARGE ARE RELATIVELY SIMPLE AND ARE AS FOLLOWS: THE UNION WAS ON STRIKE AND THE GRIEVOR WAS PICKETING THE PLANT. THE GRIEVOR PURCHASED SOME VIALS OF TEAR GAS AND THREW A VIAL AT A TRUCK THAT WAS CROSSING THE PICKET LINE. THE VIAL BROKE AND THE DRIVER OF THE TRUCK WAS FRIGHTENED BECAUSE OF THE SUBSTANCE THAT GOT INTO HIS EYES, AND HE THEN SAW A NURSE AND WENT TO THE HOSPITAL TO BE TREATED.

3. THERE APPEARS TO BE NO DISPUTE ABOUT THESE FACTS AND COUNSEL FOR THE COMPLAINANT ADMITS THAT THE ACTION BY THE GRIEVOR WAS SERIOUS.

4. COUNSEL FOR THE UNION ARGUED QUITE FORCFULLY THAT THE GRIEVOR WAS SELECTED FOR DISCHARGE ON THE BASIS OF HIS UNION ACTIVITY. THE UNION CLAIMS THAT CERTAIN MEMORANDA WHICH WERE SENT TO PERSONNEL OFFICERS ABOUT STRIKE MISCONDUCT TOGETHER WITH THE DELAY IN DISCHARGING THE GRIEVOR WERE EVIDENCE FROM WHICH THE BOARD COULD DRAW AN INFERENCE THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY.

5. A REVIEW OF THE EVIDENCE DOES NOT INDICATE THAT SUCH WAS THE CASE. IT APPEARS THAT THE EMPLOYER WAS IN THE MIDST OF VERY SENSITIVE AND HARD BARGAINING AND WAS SEEKING TO THREAD A FINE LINE BETWEEN NOT ANTAGONIZING THE UNION DURING BARGAINING, WHILE AT THE SAME TIME TAKING A FIRM POSITION WITH STRIKERS WHO ENGAGED IN MISCONDUCT.

6. IN ARRIVING AT ITS DECISION, IT IS OBVIOUS THAT THE RESPONDENT'S DELAY WAS OCCASIONED BY AN ATTEMPT TO CO-ORDINATE ITS ACTIVITIES THROUGHOUT ONTARIO, AND TO TREAT SIMILAR SITUATIONS ON A SIMILAR BASIS. IN PART, THAT EXPLAINS THE REASON FOR THE DELAY.

7. WITH RESPECT TO THE VARIOUS MEMORANDA FILED AS EXHIBITS, IT IS OUR VIEW, THAT THESE EXHIBITS MUST BE CONSIDERED IN THE LIGHT OF THE EVENTS SURROUNDING THE STRIKE. DURING THE COURSE OF NEGOTIATIONS CERTAIN CONSIDERATIONS WERE GIVEN TO THE POSSIBILITY THAT DURING BARGAINING THE UNION MIGHT ATTEMPT TO NEGOTIATE ABOUT SPECIFIC DISCIPLINARY SITUATIONS.

THAT HAD OCCURRED. THE COMPANY REALIZING THAT ITS DISCIPLINARY ACTION MIGHT BECOME PART OF THE NEGOTIATIONS, ATTEMPTED TO DOCUMENT THE INCIDENTS IN ANTICIPATION THAT THERE MIGHT BE SOME NEGOTIATION CONCERNING THOSE SITUATIONS, OR ALTERNATIVELY THAT THE DISCIPLINARY ACTION WOULD BE PROCEEDED WITH. WE RECOGNIZE AS ONE OF THE INDUSTRIAL NORMS THAT DURING THE COURSE OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT INDIVIDUAL DISCIPLINARY ACTION MAY BE ONE OF THE ISSUES THAT IS NEGOTIATED AS PART OF THE SETTLEMENT.

8. IN THESE CIRCUMSTANCES WE DO NOT READ THE MEMORANDA OF THE COMPANY WHICH DISCUSSED STRIKE MISCONDUCT WITH A VIEW TO SETTLEMENT OR DISCIPLINARY ACTION AS BEING OUT OF THE ORDINARY AND AS A BASIS FOR FINDING THAT THE GRIEVOR WAS DISCHARGED FOR UNION ACTIVITY. WE FIND, IN ALL THE CIRCUMSTANCES, THAT THE GRIEVOR WAS SPECIFICALLY DISCHARGED FOR HIS CONDUCT IN THROWING THE VIAL; THERE APPEARS TO BE NO OTHER REASON FOR SELECTING THE GRIEVOR FOR DISCHARGE. THE DISCHARGE IN THESE CIRCUMSTANCES DOES NOT CONTRAVENE THE LABOUR RELATIONS ACT AND THE COMPLAINT IS ACCORDINGLY DISMISSED.

3862-73-R: NURSES' ASSOCIATION VICTORIA HOSPITAL, LONDON (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: MICHAEL E. ROYCE, MISS MARGARET O'CONNOR AND JOHN THOMAS FOR THE APPLICANT; W. J. WHITTAKER, Q.C., E. H. WRIGHT AND CARMAN DYER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. ADE: OCTOBER 1, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED AUGUST 9, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT HEAD NURSE AND AS CHARGE NURSE DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD NURSE ARE NOT NORMALLY INVOLVED IN DIRECT PATIENT CARE BUT ONLY RELIEVE IN THE ABSENCE OF A GENERAL DUTY NURSE OR IN EMERGENCY SITUATIONS. THE HEAD NURSES MAKE EFFECTIVE RECOMMENDATIONS AND MEANINGFUL INPUT IN GROUP DISCUSSIONS WITH OTHER MEMBERS OF MANAGEMENT. THEY PARTICIPATE AND AT TIMES INITIATE CHANGES WHICH MANAGEMENT MAKES IN ITS

OPERATIONS. THEY ARE NOT MERELY CONDUITS FOR INFORMATION BETWEEN MANAGEMENT AND EMPLOYEES BUT THEIR DUTIES INCLUDE THE ENFORCEMENT OF POLICIES AND DIRECTIVES OF THE HOSPITAL. THEY ALSO MAKE EFFECTIVE RECOMMENDATIONS FOR PROMOTIONS AND TRANSFERS WHICH AT TIMES MAY RESULT IN THE DISCHARGE OF EMPLOYEES. THE HEAD NURSES ARE ALSO REQUIRED TO COMPLETE WRITTEN EVALUATION REPORTS AND TO MAKE RECOMMENDATIONS CONCERNING SALARY INCREASES. THEY ALSO MAKE DECISIONS ON MATTERS WHICH DIRECTLY AFFECT THE GENERAL DUTY NURSES WHOM THEY SUPERVISE, SUCH AS SCHEDULING OF WORK AND VACATIONS AND GIVING WRITTEN AUTHORIZATION FOR CHANGES IN SHIFTS. WHEN THE ABOVE FUNCTIONS ARE CONSIDERED IN THEIR TOTALITY, WE FIND THAT THE HEAD NURSES SPEND APPROXIMATELY 70% OF THEIR TIME EXERCISING SUPERVISORY FUNCTIONS WHICH, IN THESE CIRCUMSTANCES, MAY PROPERLY BE CHARACTERIZED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE ARE OF THE VIEW THAT THE EVIDENCE IN THE INSTANT CASE IS CLEARLY DISTINGUISHABLE FROM THE EVIDENCE AS REPORTED IN THE AJAX AND PICKERING GENERAL HOSPITAL CASE, OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1283; ESSEX HEALTH ASSOCIATION CASE, OLRB MONTHLY REPORT, NOVEMBER 1970, P. 824; PETERBOROUGH CIVIC HOSPITAL CASE, (1973) OLRB REP. 154; AND THE CORPORATION OF THE CITY OF HAMILTON CASE, (1972) OLRB REP. 697. WE ACCORDINGLY FIND THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD NURSE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT IN THIS MATTER.

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DECISION OF BOARD MEMBER EDMUND BOYER: OCTOBER 1, 1973.

I DISSENT.

HAVING CONSIDERED ALL THE EVIDENCE, I WOULD FIND THAT HEAD NURSES ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

1712-71-R: HILDA WAGNER (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF LAMBTON (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: C. E. FLECK FOR THE APPLICANT; J. SACK, L. PARE AND B. JANISSE FOR THE RESPONDENT; A. LOUIS EDDY, Q.C. FOR THE INTERVENER.

DECISION OF ALTERNATE CHAIRMAN J. H. BROWN, Q.C., AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: OCTOBER 3, 1973.

1. THIS IS AN APPLICATION BY THE RESPONDENT TRADE UNION UNDER

§95(1) OF THE ACT SEEKING REVOCATION OF A BOARD ORDER DATED JULY 7, 1972 TERMINATING BARGAINING RIGHTS OF THE RESPONDENT FOR A GROUP OF EMPLOYEES EMPLOYED BY THE INTERVENER CORPORATION AT ITS TWILIGHT HAVEN HOME.

2. IN SUPPORT OF THE APPLICATION THE RESPONDENT HAS MADE SEVERAL ALLEGATIONS RELATING TO THE ACTIVITIES OF THE APPLICANT AND INTERVENER WITH RESPECT TO THE PAYMENT OF THE APPLICANT'S LEGAL FEES. MORE PARTICULARLY THE RESPONDENT TRADE UNION HAS ALLEGED AS A RESULT OF THE PAYMENT BY THE INTERVENER OF THE APPLICANT'S LEGAL FEES, A FRAUD HAS BEEN PERPETRATED ON THE BOARD'S PROCESSES VITIATING THE BOARD'S ORDER TERMINATING THE RESPONDENT'S BARGAINING RIGHTS.

3. SINCE THESE ALLEGATIONS WERE FILED ON MAY 2, 1973, SOME EIGHT MONTHS AFTER THE BOARD'S ORDER, THE BOARD, AS A PRELIMINARY MATTER, INQUIRED INTO THE TIMELINESS OF THE CHARGES. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD DETERMINED AT THE HEARING THAT THE EVIDENCE IN SUPPORT OF THE RESPONDENT'S ALLEGATIONS SHOULD BE ENTERTAINED.

4. AFTER THE BOARD'S ORDER OF JULY 7, 1972, MRS. HILDA WAGNER THOUGHT THAT THERE WOULD BE DIFFICULTY IN COLLECTING FROM THE VARIOUS PETITIONERS FOR THE PAYMENT OF THEIR COUNSEL'S FEE. MRS. WAGNER DECIDED NOT TO EMBARK UPON THE COLLECTION ATTRIBUTING THESE CONTEMPLATED DIFFICULTIES TO ILLNESS, ABSENTEEISM DUE TO VACATION AND GENERAL FINANCIAL HARDSHIP WITH RESPECT TO THE AMOUNT TO BE COLLECTED. SHE ALONG WITH TWO COLLEAGUES DECIDED TO APPROACH THE ADMINISTRATOR FOR THE TWILIGHT HAVEN HOME (MR. TITUS) WITH A VIEW TO SOLICITING THE INTERVENER TO PAY THE OUTSTANDING LEGAL FEE. MR. TITUS OFFERED TO LEND HIS ASSISTANCE BY PUTTING THE MATTER BEFORE THE LAMBTON TWILIGHT HAVEN COMMITTEE FOR DELIBERATION.

5. IN THE INTERIM, UPON THE RECOMMENDATION OF MR. TITUS, MRS. WAGNER INSTRUCTED HER SOLICITOR TO REMIT HIS BILL IN THE MATTER TO THE INTERVENER CORPORATION. MR. FLECK FOLLOWING THE INSTRUCTIONS OF HIS CLIENT COMPLIED WITH HER REQUEST. THE MATTER WAS PUT BEFORE THE COMMITTEE AT ITS MEETING OF JULY 12, 1972, BUT NOTHING WAS RESOLVED AT THAT TIME.

6. AT THE MEETING OF THE COMMITTEE ON SEPTEMBER 8, 1972, THE MATTER WITH RESPECT TO THE LEGAL FEES WAS AGAIN RAISED AND THE COMMITTEE UNANIMOUSLY APPROVED THE PAYMENT AND INSTRUCTED MRS. ELLIOT (WHO SUBSEQUENTLY REPLACED MR. TITUS AS ADMINISTRATOR OF THE HOME) TO TAKE THE APPROPRIATE STEPS TO SEE THAT THE FEE WAS SATISFIED. LATER AT A MEETING OF THE COUNCIL OF THE COUNTY OF LAMBTON ON OCTOBER 6, 1972, THE MATTER OF THE PAYMENT OF THE FEE WAS APPROVED IN THE ORDINARY COURSE AS A PART OF THE GENERAL EXPENSES OF THE HOME.

7. IN APPLICATIONS INVOLVING REPRESENTATION MATTERS GENERALLY AND APPLICATIONS FOR TERMINATION PARTICULARLY, IT IS THE BOARD'S POLICY TO SUBJECT ANY ALLEGATION OF MANAGERIAL INFLUENCE TO THE UTMOST SCRUTINY.

THIS BOARD VIEWS THE PRESERVATION OF EMPLOYEE FREEDOM OF EXPRESSION AS CENTRAL TO THE PROPER DISPOSITION OF SUCH APPLICATIONS. WHERE THERE IS EVIDENCE THAT THE TRUE WISHES OF EMPLOYEES HAVE NOT BEEN REFLECTED IN A REPRESENTATION MATTER THE BOARD WILL NOT HESITATE TO MAKE THE APPROPRIATE REMEDIAL ORDER. (SEE: THE REMINGTON RAND LIMITED CASE OLRB M.R. MARCH 1963, 535).

8. IN THIS MATTER HOWEVER THE EMPLOYER ASSISTANCE EXTENDED THE APPLICANT TOOK PLACE AFTER ALL ISSUES MATERIAL TO THE DISPOSITION OF THE APPLICATION HAD BEEN DETERMINED BY THE BOARD. IN FACT, COUNSEL FOR THE RESPONDENT CONCEDED THAT UP TO THE TIME OF THE IMPUGNED PAYMENT OF LEGAL FEES THERE WAS NO EVIDENCE TO SUPPORT ANY ALLEGATION THAT THE TRUE WISHES OF EMPLOYEES HAD NOT BEEN REFLECTED. IN FACT, THE EVIDENCE INDICATED THAT SAVE FOR MRS. WAGNER AND TWO OF HER COLLEAGUES, THE EMPLOYEES WERE NOT EVEN ADVISED OF THE EFFORTS TO SEEK EMPLOYER ASSISTANCE WITH RESPECT TO THE FEE. THIS BOARD THEREFORE CANNOT CONCLUDE THAT THE APPLICATION FOR TERMINATION WAS IN ANY WAY TAINTED BY THE FINANCIAL ASSISTANCE LENT THE APPLICANT IN THIS MATTER TO JUSTIFY REVOCATION OF ITS ORDER OF JULY 7, 1972. (SEE: MINIT CAR WASH CASE OLRB M.R. JANUARY 1960, 351; BREWERS WAREHOUSING COMPANY LTD. CASE OLRB M.R. MAY 1967, 203).

9. COUNSEL FOR THE RESPONDENT URGES THE BOARD TO REVOKE ITS ORDER ON THE BASIS THAT THE PAYMENT BY THE INTERVENER OF THE APPLICANT'S LEGAL FEES WILL LEAVE A LASTING AND "CORRUPTING" IMPRESSION ON THE EMPLOYEES WITH RESPECT TO FUTURE REPRESENTATION APPLICATIONS. FURTHERMORE IT IS SUBMITTED THAT FOR THE BOARD NOT TO REVOKE THE ORDER WOULD BE AN INVITATION FOR FURTHER ABUSE OF THIS NATURE.

10. THIS BOARD AGREES THAT COUNSEL'S CONCERNS IN THIS REGARD ARE NOT UNWARRANTED. NEVERTHELESS, THE IMPACT OF THE INTERVENER'S ACTIVITY ON FUTURE COLLECTIVE BARGAINING ISSUES INVOLVING ITS EMPLOYEES IS A MATTER OF SHEER SPECULATION. THE EXTENT TO WHICH THE EMPLOYEES HAVE BEEN AFFECTED BY THE INTERVENER'S INTERFERENCE WILL HAVE TO DO DETERMINED AT THE APPROPRIATE TIME.

11. FURTHERMORE, WITH RESPECT TO THE LATTER SUGGESTION OF ABUSE, THIS BOARD IS OF THE OPINION THAT HAD THERE BEEN ANY EVIDENCE OF AN AGREEMENT, PREARRANGEMENT, CONSPIRACY OR OTHERWISE WITH RESPECT TO THE PAYMENT OF THE APPLICANT'S LEGAL FEES IN THIS MATTER A DIFFERENT RESULT MAY VERY WELL HAVE FOLLOWED.

12. AS A RESULT, THE RESPONDENT'S APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: OCTOBER 3, 1973.

1. I CONCUR WITH THE MAJORITY IN THE DECISION TO DISMISS THE APPLICATION. HOWEVER, IN THIS CASE THE CIRCUMSTANCES ARE SUCH THAT SOME FURTHER DISCUSSION OF THE EVIDENCE IS NECESSARY. A FUTURE APPLICATION FOR CERTIFICATION HERE MAY INDEED BE PRIVILEGED TO BE MADE WITHOUT

THE NORMAL RESTRICTION OF A BAR FOLLOWING A VOTE. ALMOST CERTAINLY ANY FUTURE PETITION PRESENTED BY OBJECTORS TO AN APPLICATION FOR CERTIFICATION WITH RESPECT TO THIS EMPLOYER WOULD COME UNDER THE MOST SEARCHING SCRUTINY BY THE BOARD.

2. THE APPLICANT'S LEGAL FEES REFERRED TO BY THE MAJORITY WAS FOR \$1,000.00. IT COVERED THE PREPARATION AND CARRYING OF THREE APPLICATIONS FOR TERMINATION BY HILDA WAGNER ALONG WITH SHIRLEY TOBY AND BERNICE WOODS MADE ON 13 MAY 1972, 12 JANUARY 1972 AND 2ND MARCH 1972.

3. THE DETERMINED EFFORTS OF THE APPLICANT FINALLY RESULTED IN A VOTE BEING ORDERED BY THE BOARD, THE RESULTS OF WHICH WERE REPORTED ON 30 JUNE, 1972, AS FOLLOWS:

PERSONS ON THE VOTERS' LISTS	50
PERSONS CASTING BALLOTS	46
BALLOTS MARKED IN FAVOUR OF THE RESPONDENT UNION	20
BALLOTS MARKED AGAINST THE RESPONDENT UNION	26

THE BARGAINING RIGHTS OF THE TRADE UNION WERE TERMINATED BY A MAJORITY OF ONE VOTE, SINCE 25 VOTES WOULD HAVE BEEN EXACTLY 50 PER CENT, AND THE ACT REQUIRES "MORE THAN 50 PER CENT" FOR TERMINATION.

4. IT IS IMPROBABLE THAT THE APPLICANT IN THIS MATTER WOULD BE UNAWARE THAT MANAGEMENT SUPPORT FOR THEIR CAUSE WOULD BE FATAL. SHE HAD BEEN THROUGH THE DRILL OF MAKING THIS APPLICATION THREE TIMES. IN SPITE OF THAT EXPERIENCE, HILDA WAGNER SPOKE TO THE TOP MANAGEMENT OFFICIAL MR. TITUS, THE ADMINISTRATOR, AND ASKED FOR ASSISTANCE IN PAYING THE LEGAL COSTS OF THE APPLICANT. MR. TITUS COULD ALSO BE EXPECTED TO BE KNOWLEDGEABLE CONCERNING THIS MATTER SINCE HE SIGNED THE REPLY TO THE INTERVENER AND ATTENDED THE BOARD HEARINGS AS AN INTERESTED PARTY WITH COUNSEL. THIS IS NOT IN ANY WAY WHATSOEVER TO SUGGEST THAT HIS COUNSEL HAD KNOWLEDGE OF THE SUBSEQUENT AGREEMENT OF MR. TITUS TO HELP OUT THE APPLICANT, BUT ONLY TO SAY THAT THE RELATIONSHIP THE EMPLOYER IS REQUIRED TO MAINTAIN IN THESE MATTERS COULD HARDLY HAVE BEEN UNKNOWN TO MR. TITUS.

5. THE EVIDENCE OF HILDA WAGNER (EXHIBIT 1) IS THAT SHE PREPARED NOTES THE DAY BEFORE THE HEARING IN RESPONSE TO A SUBPOENA REQUIRING PRODUCTION AT THE HEARING OF "ALL DOCUMENTS, CORRESPONDENCE, MINUTES, MEMORANDA, RESOLUTIONS, ACCOUNTS, CHEQUES, CHEQUE VOUCHERS AND FINANCIAL RECORDS RELATING TO THE TERMINATION APPLICATION HEREIN AND ALL MATTERS IN ISSUE HEREIN". EXHIBIT No. 1 WAS AMONG THE MATERIAL BROUGHT TO THE WITNESS BOX BY MRS. WAGNER, BEING HANDWRITTEN NOTES, AS FOLLOWS:

"THOSE WHOSE NAMES ON PETITION FOR TERMINATION WERE ASKED ABOUT EXPENSES, NO ONE OBJECTED TO SHARING COST.

AFTER REPRESENTATION VOTE JUNE 28 AND TERMINATION OF S.E.W. WE (TOBEY, WOODS & WAGNER) WENT TO MR. FLECK'S OFFICE TO INQUIRE OF HIS FEES AND PAYMENT. FEES WERE \$1000 WE TOLD HIM WE PLANNED TAKING UP COLLECTIONS FROM THOSE WHO HAD SIGNED THE PETITIONS, AND THAT THIS HAD BEEN PLANNED FROM THE BEGINNING.

AFTER LEAVING MR. FLECK'S OFFICE, ON WAY HOME WE WERE DISCUSSING COLLECTING THE MONEY FROM CO-WORKERS. AT THAT TIME SOME WERE ON VACATIONS AND COULDN'T BE REACHED FOR 2 OR 3 WEEKS. SOME HAD HAD LENGTHY ILLNESSES, THAT IT POSSIBLY WOULD BE QUITE A BURDEN TO MAKE PAYMENT SINCE SEVERAL ARE SOLE SUPPORT FOR THEIR FAMILIES OR FOR THEMSELVES. SO THEN WE WONDERED IF THE COUNTY WOULD HELP OUT IN SOME WAY. WE DIDN'T KNOW WHO WE SHOULD CONTACT, SO WE WENT TO MR. TITUS OFFICE AND TOLD HIM WE HAD THOUGHT OF ASKING THE COUNTY FOR HELP TO PAY MR. FLECK'S FEES. HE TOLD US THAT WHEN THE NEXT HOME COMMITTEE MEETING CAME UP HE WOULD INQUIRE.

ABOUT A WEEK LATER MR. TITUS CALLED US (TOBEY, WOODS & MYSELF) TO HIS OFFICE, AND TOLD US THERE WAS A COMMITTEE MEETING HE WAS GOING TO, AND IF WE HAD MR. FLECK'S STATEMENT? WHICH WE HADN'T AS YET, SO HE ADVISED US TO CALL MR. FLECK'S OFFICE AND HAVE THE STATEMENT MADE OUT TO TWILIGHT HAVEN AND HE WOULD PRESENT IT TO THE COMMITTEE. THIS WAS GIVEN TO MR. TITUS JULY 12/72.

ABOUT AUG. 21 MRS. TOBEY RECEIVED A LETTER AT THE HOME FROM MR. FLECK INQUIRING ABOUT PAYMENT OF HIS FEES. WE TOOK THIS LETTER TO MR. TITUS OFFICE TO SEE IF HE KNEW IF THE COUNTY WAS GOING TO ACCEPT IT OR NOT. HE (MR. TITUS) HADN'T HEARD ANYTHING.

LATER APPROXIMATELY A WEEK OR TWO MRS. ELLIOTT INFORMED US THAT THE COUNTY HAD AGREED TO HELP US AND THAT IT WAS BEING TAKEN CARE OF."

MRS. WAGNER TESTIFIED THAT SHE SHOWED THESE NOTES TO "THE GIRLS WHO

CAME TO THE HEARING WITH HER". SHE FURTHER TESTIFIED THAT SHE CALLED MR. FLECK AND ASKED HIM TO MAKE HIS ACCOUNT TO TWILIGHT HAVEN HOME AND THAT SHE PICKED UP THE ACCOUNT FROM MR. FLECK AND GAVE IT TO MR. TITUS ON 12TH JULY, 1972, THE SAME DAY THAT SHE RECEIVED IT. SHE GAVE MR. TITUS THE ORIGINAL BILL AND DID NOT KEEP A COPY. THE PHOTOCOPY OF THE ACCOUNT AND ACCOMPANYING MATERIAL WAS IDENTIFIED BY THE WITNESS AND ENTERED AS EXHIBIT NO. 2. THESE DOCUMENTS APPEAR AS FOLLOWS:

"JULY 12, 1972.

MRS. HILDA WAGNER,
R. R. #2,
OIL SPRINGS, ONTARIO.

DEAR MADAM: RE: HILDA WAGNER AND SERVICE
EMPLOYEES LOCAL UNION 210
AND THE CORPORATION OF THE
COUNTY OF LAMBTON

IN THE ABOVE MATTER I WOULD CONFIRM THAT I HAVE NOW RECEIVED CONFIRMATION FROM THE ONTARIO LABOUR RELATIONS BOARD THAT THE RIGHT OF REPRESENTATION BY THE SERVICE EMPLOYEES UNION HAS BEEN TERMINATED AND THEY ARE NO LONGER YOUR BARGAINING AGENT.

THIS MATTER BEING COMPLETED I AM ACCORDINGLY ENCLOSING HERewith A STATEMENT OF MY ACCOUNT FOR REPRESENTATIONS BY THIS FIRM.

TRUSTING THE MATTER WAS COMPLETED TO YOUR SATISFACTION I REMAIN,

YOURS TRULY,

(SIGNATURE)

CARL E. FLECK"

"TWILIGHT HAVEN,
LAMBTON COUNTY,
PETROLIA, ONTARIO.

JULY 12, 1972

IN ACCOUNT WITH

GARRETT & FLECK

BARRISTERS & SOLICITORS

RE: HILDA WAGNER AND SERVICE EMPLOYEES LOCAL
UNION 210 AND THE CORPORATION OF THE
COUNTY OF LAMBTON

TO RECEIVING INSTRUCTIONS TO REPRESENT SHIRLEY TOBEY, HILDA WAGNER, BERNICE WOODS ET AL IN APPLICATION FOR TERMINATION OF SERVICE EMPLOYEES UNION LOCAL 210 AS BARGAINING AGENT OF TWILIGHT HAVEN, INCLUDING PREPARATION OF APPLICATION ON MAY 13, 1971 AND FILING SAME WITH LABOUR RELATIONS BOARD, INCLUDING OFFICE ATTENDANCES TO DISCUSS UNION SITUATION AT TWILIGHT HAVEN, CORRESPONDENCE WITH LABOUR RELATIONS BOARD; RECEIVING DECISION THAT APPLICATION WAS PREMATURE;

TO PREPARATION OF APPLICATION FOR TERMINATION OF BARGAINING RIGHTS ON JANUARY 12, 1972 AND FILING SAME WITH LABOUR RELATIONS BOARD, INCLUDING OFFICE ATTENDANCES TO DISCUSS LABOUR SITUATION AT TWILIGHT HAVEN, EXECUTION OF APPLICATION; TO RECEIVING DECISION OF LABOUR RELATIONS BOARD REGARDING APPLICATION;

TO FURTHER PREPARATION OF APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WITH HILDA WAGNER AS APPLICANT ON MARCH 2, 1972 INCLUDING ATTENDANCE UPON EXECUTION OF APPLICATION AND FILING SAME WITH LABOUR RELATIONS BOARD;

TO RECEIVING NOTIFICATION OF HEARING BEFORE LABOUR RELATIONS BOARD IN TORONTO INCLUDING PREPARATION FOR HEARING, PRESENTATION OF PETITIONS BEFORE LABOUR RELATIONS BOARD, CALLING EVIDENCE, PRESENTING ARGUMENTS, RECEIVING DECISION OF LABOUR RELATIONS BOARD, DIRECTING INQUIRY (TIME - 1 DAY);

ATTENDANCES AT TWILIGHT HAVEN ON TUESDAY, APRIL 25, 1972 AT 10 A.M. INCLUDING PRESENTATION OF PETITION PREPARING LIST OF ELIGIBLE VOTERS FOR UNION VOTE, PRESENTATION OF ARGUMENT (TIME 1 DAY);

TO ATTENDANCE AT LAMBTON COUNTY BUILDINGS ON JUNE 13, 1972 TO RESOLVE ARRANGEMENTS FOR THE COMPLETION OF A TERMINATION VOTE;

TO ATTENDANCE AT TWILIGHT HAVEN JUNE 28, 1972 TO ASSIST IN TALLYING OF VOTE;

TO CORRESPONDENCE THROUGHOUT (46 LETTERS
WRITTEN AND RECEIVED);

TO RECEIVING DECISION OF ONTARIO LABOUR
RELATIONS BOARD TERMINATING THE BARGAINING
RIGHT OF SERVICE EMPLOYEES UNION LOCAL 210
FOR TWILIGHT HAVEN EMPLOYEES;

OUR FEE FOR ALL SERVICES HEREIN \$1,000.00

THIS IS OUR ACCOUNT HEREIN
GARRETT & FLECK

PER: (SIGNED C. E. FLECK)"

6. THE BOARD CAN ONLY DEAL WITH THE FACTS AS THEY WERE WHEN THE VOTE WAS TAKEN. THE EMPLOYEES VOTING THOUGHT THEY WERE PAYING THE LEGAL EXPENSES. THE NEW FACTS ADDUCED AT THIS HEARING MAY MEAN NOTHING TO THE EMPLOYEES. ON THE OTHER HAND, THEY MAY NOW SEE THE QUESTION IN A DIFFERENT LIGHT. HOW THESE NEW FACTS WOULD AFFECT THEIR JUDGMENT CAN ONLY BE A MATTER OF SPECULATION, BUT IN MY OPINION THE BOARD WOULD HAVE TO VIEW ANY NEW APPLICATION FOR CERTIFICATION WITH ALL DUE WEIGHT ACCORDED THE EVENTS HEREIN DEALT WITH.

3908-73-R: NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 9, 1973.

1. PURSUANT TO A BOARD ORDER DIRECTING A REPRESENTATION VOTE FOR ALL EMPLOYEES DESCRIBED IN BARGAINING UNIT #2 IN THE ABOVE MATTER, THE REPORT OF THE RETURNING OFFICER INDICATED THAT OF THE FORTY-EIGHT PERSONS DETERMINED TO BE ELIGIBLE TO CAST A BALLOT AS REFLECTED ON THE REVISED VOTERS' LIST, ONLY EIGHT CHOSE TO EXERCISE THEIR FRANCHISE. OF THE EIGHT BALLOTS CAST SIX WERE MARKED IN FAVOUR OF THE APPLICANT AND TWO WERE MARKED AGAINST.

2. IN HIS WRITTEN REPRESENTATIONS DATED SEPTEMBER 11, 1973, COUNSEL FOR THE RESPONDENT URGES THE BOARD IN EXERCISE OF ITS DISCRETION UNDER SECTION 92(5) OF THE ACT TO DIRECT A SECOND VOTE ARGUING THE FIRST VOTE WAS NOT A TRUE REFLECTION OF THE EMPLOYEES WISHES. NO ALLEGATION IS MADE WITH RESPECT TO THE PROPRIETY OF THE CONDUCT OF THE VOTE NOR IS THERE ANY SUGGESTION THAT AN OPPORTUNITY WAS DENIED AN ELIGIBLE PERSON TO CAST A BALLOT. IN THIS REGARD, THE BOARD NOTES THAT NO REPRESENTATIONS

WERE RECEIVED WITH RESPECT TO THE RETURNING OFFICER'S REPORT FROM ANY OF THE EMPLOYEES AFFECTED.

3. BY ENACTMENT OF THE LABOUR RELATIONS AMENDMENT ACT S.O. 1970, c. 85 S5(2) THE BOARD WAS DIRECTED THAT "IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS CAST ARE CAST IN FAVOUR OF THE TRADE UNION...THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT."

4. THE RESPONDENT HAS SUBMITTED NO EVIDENCE IN SUPPORT OF ITS REPRESENTATIONS PERSUADING THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 92(5), NOR WAS THERE A REQUEST MADE BY THE RESPONDENT THAT A HEARING BE HELD FOR THE PURPOSE OF ADDUCING EVIDENCE. OR, IN THE ALTERNATIVE, THERE IS NOTHING BEFORE THE BOARD TO CAUSE IT TO DEPART FROM THE MANDATORY DIRECTION OF THE LEGISLATURE IN ENACTING THE ABOVE AMENDMENT, [I.E., THE LABOUR RELATIONS ACT R.S.O. 1970, c. 232, S7(3)].

5. FURTHERMORE, THE BOARD HAVING REGARD TO THE REPRESENTATIONS MADE BY COUNSEL WITH RESPECT TO THE RETURNING OFFICERS REPORT CANNOT CONCLUDE THAT THE MERE ELECTION BY AN EMPLOYEE (OR A GROUP OF EMPLOYEES) NOT TO EXERCISE HIS (THEIR) RIGHTS UNDER THE ACT SHOULD RAISE AN INFERENCE THAT THE VOTE IS NOT A TRUE REFLECTION OF THE EMPLOYEES' DESIRES.

6. IN THE RESULT, A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #2.

. . .

4334-73-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MALETTE LUMBER (1969) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: OCTOBER 11, 1973.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

3. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL, YARD AND GARAGE AT TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

4. IT IS NOTED THAT THE APPLICANT REQUESTED THE EXCLUSION OF "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" FOR THE FIRST TIME AT THE PRE-HEARING VOTE MEETING IN THIS MATTER. THIS EXCLUSION WAS OPPOSED BY THE RESPONDENT. ONE OF THE PURPOSES OF THE PRE-HEARING VOTE MEETING AS AUTHORIZED BY THE BOARD'S DECISION OF SEPTEMBER 5, 1973 IS "TO CONFER WITH THE PARTIES AS TO THE DESCRIPTION AND COMPOSITION OF THE VOTING CONSTITUENCY..." THE PARTIES MAY PROPOSE CHANGES IN THE VOTING CONSTITUENCY AT THE PRE-HEARING VOTE MEETING WHICH DO NOT APPEAR IN EITHER THE APPLICATION OR THE REPLY THAT HAVE BEEN FILED BY THE PARTIES. IT IS THE BOARD'S REGULAR PRACTICE TO EXCLUDE "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" WHEN THERE IS A HISTORY OF EMPLOYING SUCH PERSONS AND WHERE EITHER PARTY HAS REQUESTED SUCH EXCLUSION. AS INDICATED EARLIER, SUCH A REQUEST MAY BE MADE AT A PRE-HEARING VOTE MEETING CONDUCTED BY THE EXAMINER, OR, IN APPLICATIONS WHERE NO PRE-HEARING VOTE IS REQUESTED, EITHER PARTY MAY REQUEST SUCH AN EXCLUSION AT A HEARING CONDUCTED BY THE BOARD AT WHICH TIME THE BOARD ASKS THE PARTIES WHETHER THEY HAVE ANY REPRESENTATIONS TO MAKE CONCERNING THE DESCRIPTION AND COMPOSITION OF THE BARGAINING UNIT. ACCORDINGLY, THE BOARD HAS DESCRIBED THE VOTING CONSTITUENCY IN THE TERMS SET OUT ABOVE IN VIEW OF THE APPLICANT'S REQUEST MADE AT THE PRE-HEARING VOTE MEETING AND IN ACCORDANCE WITH THE BOARD'S REGULAR PRACTICE.

5. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 14TH DAY OF SEPTEMBER, 1973 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 14TH DAY OF SEPTEMBER, 1973 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

. . .

15. THE MATTER IS REFERRED TO THE REGISTRAR.

3071-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANTS) v. CANAC SHOCK ABSORBERS LIMITED (RESPONDENT) v. CANADIAN ACME SCREW & GEAR LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. ARMSTRONG, R. WHITE, M. MCKENZIE AND T. NIERLER FOR THE APPLICANT; E. HASSIM AND J. G. ARNOLD FOR THE RESPONDENT; J. P. SANDERSON, R. BALDWIN AND B. LYONS FOR THE INTERVENER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: OCTOBER 11, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT WITH RESPECT TO THE BARGAINING RIGHTS OF THE APPLICANTS, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 984, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (HEREINAFTER REFERRED TO AS THE APPLICANTS), AS THE RESULT OF A PURPORTED SALE OF PART OF BUSINESS BY CANADIAN ACME SCREW & GEAR LIMITED (HEREINAFTER REFERRED TO AS "ACME") TO CANAC SHOCK ABSORBERS LIMITED (HEREINAFTER REFERRED TO AS "CANAC").

2. THE APPLICANTS CONTENDED, IN THE ALTERNATIVE, THAT ACME AND CANAC FALL WITHIN THE PROVISIONS OF SECTION 1(4) OF THE LABOUR RELATIONS ACT AND THAT THE BOARD SHOULD TREAT THEM AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THE ACT. THE APPLICANTS SUBMITTED THAT THE RESULT OF SUCH ACTION BY THE BOARD WOULD BE THAT THE APPLICANTS' BARGAINING RIGHTS WITH RESPECT TO ACME, WOULD BE APPLICABLE TO BOTH CORPORATIONS, AS CONSTITUTING ONE EMPLOYER AND THAT THEREFORE THERE WOULD BE NO NEED FOR A DECLARATION OF SUCCESSORSHIP AND THAT, FURTHER, THE BARGAINING RIGHTS OF THE APPLICANTS ARE UNEFFECTED BY THE CORPORATE TRANSACTIONS UNDER REVIEW.

3. THE RELEVANT PORTIONS OF SECTION 55 ARE AS FOLLOWS:

55. (1) IN THIS SECTION,

(A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;

(B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVE CORRESPONDING MEANINGS.

(2) WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY THERETO AND, WHERE AN EMPLOYER SELLS HIS BUSINESS WHILE AN APPLICATION FOR CERTIFICATION OR TERMINATION OF BARGAINING RIGHTS TO WHICH HE IS A PARTY IS BEFORE

THE BOARD, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, THE EMPLOYER FOR THE PURPOSES OF THE APPLICATION AS IF HE WERE NAMED AS THE EMPLOYER IN THE APPLICATION.

- (3) WHERE AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE, HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 13, SELLS HIS BUSINESS, THE TRADE UNION OR COUNCIL OF TRADE UNIONS CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 13.

4. SECTION 1(4) OF THE ACT PROVIDES:

"WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT."

5. AT THE COMMENCEMENT OF THE HEARING, COUNSEL FOR THE RESPONDENT AND THE INTERVENER MADE AN ADMISSION ACKNOWLEDGING THE FACT OF A SALE OF THE SHOCK ABSORBERS' PORTION OF ACHE TO CANAC WITHIN THE MEANING OF THE ACT. THEY ARGUED THAT THIS BEING THE FACT, SECTION 1(4) COULD HAVE NO BEARING UPON THE MATTER. THEY MAINTAINED THIS POSITION THROUGHOUT THESE PROCEEDINGS.

6. THE EVIDENCE ESTABLISHES THAT CANAC AND ACHE ARE WHOLLY OWNED SUBSIDIARIES OF RUSSELL INDUSTRIES LIMITED, ONE OF FOUR HOLDING COMPANIES IN A LINE OF CORPORATE LINEAGE COMMENCING WITH SEAWAY MULTI-CORPORATION LIMITED AND DESCENDING IN DIRECT LINE THROUGH LEVY INDUSTRIES LIMITED TO LEVY RUSSELL LIMITED TO RUSSELL INDUSTRIES LIMITED.

7. SEAWAY MULTI-CORPORATION LIMITED HOLDS AN 83.1% INTEREST IN LEVY INDUSTRIES LIMITED. LEVY RUSSELL LIMITED IS WHOLLY OWNED BY LEVY INDUSTRIES LIMITED AND IN TURN OWNS A 99.98% INTEREST IN RUSSELL INDUSTRIES LIMITED.

8. THE MAJORITY OF THE VOTING SHARES OF SEAWAY MULTI-CORP LIMITED ARE OWNED BY MEMBERS OF THE LEVY FAMILY, WHO COMPRISE SEVEN OF THE TWELVE DIRECTORS OF THAT COMPANY. THE MAJORITY OF THE DIRECTORS IN EACH OF THE HOLDING COMPANIES ARE ALSO MEMBERS OF THE LEVY FAMILY AS WELL AS BEING DIRECTORS OF SEAWAY MULTI-CORPORATION LIMITED.

9. EDWARD LEVY, WHO IS VICE-PRESIDENT AND ASSISTANT TO THE PRESIDENT BENJAMIN LEVY OF ACME, IS ALSO PRESIDENT OF CANAC. BOTH ARE DIRECTORS OF CANAC AND ACME.

10. EDWARD LEVY TESTIFIED THAT THE DECISIONS TAKEN WITH RESPECT TO ACME AND CANAC WERE MADE AT THE SEAWAY MULTI-CORPORATION LIMITED LEVEL. MR. HASSIM, COUNSEL FOR THE RESPONDENT, CONCEDED THAT ACME AND CANAC WERE UNDER COMMON DIRECTION AND COMMON CONTROL.

11. FOR A CONSIDERABLE NUMBER OF YEARS, PRIOR TO AUGUST 23, 1972, A DATE THE SIGNIFICANCE OF WHICH WILL BECOME APPARENT, ACME WAS ENGAGED IN THE MANUFACTURE OF A VARIETY OF PRODUCT LINES, A CONSIDERABLE NUMBER OF WHICH WERE RELATED TO THE AUTOMOTIVE INDUSTRY. AMONG THE PRODUCTS MANUFACTURED WERE SHOCK ABSORBERS, A VERY LARGE PROPORTION, PERHAPS 85%, OF WHICH WERE PRODUCED UNDER A LICENSING AGREEMENT WITH MONROE AUTO EQUIPMENT OF MICHIGAN. THE AGREEMENT PROVIDED FOR SALE OF THE SHOCK ABSORBERS TO MAECO SHOCK ABSORBER LTD. THE AGREEMENT IS DATED AUGUST 16, 1971 AND WAS TO RUN UNTIL AUGUST 31, 1976. ALL MANUFACTURING WAS CARRIED ON IN A CLOSE COMPLEX OF BUILDINGS AT THE SAME ADDRESS ON WESTON ROAD. THE OPERATIONS WERE DIVIDED INTO DEPARTMENTS, ONE OF WHICH WAS THE SHOCK ABSORBER DEPARTMENT. IT ACCOUNTED FOR APPROXIMATELY 1/5 OF THE PRODUCTION PERSONNEL.

12. IN 1968 ACME, TOGETHER WITH MONROE ACME LIMITED AND MAREMONT ACME LIMITED, SIGNED A COLLECTIVE AGREEMENT WITH THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND LOCAL 984 THEREOF. FOR THE PURPOSES OF THIS INQUIRY AND FOR REASONS THAT ARE NOT HERE RELEVANT, THE AGREEMENT HAS SIGNIFICANCE ONLY AS IT RELATES TO THE RELATIONSHIP BETWEEN ACME AND THE APPLICANTS. WE ARE NOT CONCERNED WITH THE TWO OTHER CORPORATIONS. THE AGREEMENT WAS EFFECTIVE FROM MARCH 3, 1968 TO DECEMBER 2, 1970.

13. ON THE 23RD OF JANUARY, 1971, AN ACCORD WAS REACHED BETWEEN ACME AND THE APPLICANTS TO EXTEND THE COLLECTIVE AGREEMENT FOR A PERIOD OF EIGHTEEN MONTHS FROM THE DATE OF RATIFICATION. RATIFICATION WAS OBTAINED ON THE 25TH OF JANUARY, 1971 SO THAT THE EXTENSION EXPIRED ON THE 25TH OF JULY, 1972. THE EXTENSION WAS AGREED TO BY THE UNION FOLLOWING REPRESENTATIONS BY ACME WHO, IN FACT, SOUGHT A THIRTY-SIX MONTH EXTENSION. IT WAS ACME'S POSITION THAT A THREE YEAR MORATORIUM

ON WAGES WAS ESSENTIAL TO THE SUCCESSFUL OPERATION OF THE COMPANY. DURING THE EXTENDED PERIOD, THE COST OF LIVING FORMULA WAS MAINTAINED.

14. ON OR ABOUT MAY 26, 1972, NOTICE TO BARGAIN WAS GIVEN BY THE APPLICANTS TO ACME. A SERIES OF ULTIMATELY UNSUCCESSFUL BARGAINING MEETINGS TOOK PLACE RESULTING IN THE ISSUANCE OF A REPORT BY A BOARD OF CONCILIATION IN OR ABOUT THE FIRST WEEK OF AUGUST 1972.

15. ON AUGUST 22, 1972, ACME ISSUED A BULLETIN TO ALL EMPLOYEES IN WHICH IT MADE REFERENCE TO ITS PRIOR REQUEST FOR THE THREE YEAR MORATORIUM ON WAGES REFERRED TO ABOVE. THE BULLETIN INDICATED THAT ACME WAS ENDURING LOSSES OF MORE THAN SEVEN THOUSAND DOLLARS A DAY. THE DOCUMENT ALSO SET OUT A WAGE SURVEY WHICH PURPORTED TO SHOW THAT THE RATES PAID AT ACME WERE HIGHER THAN THE AVERAGE FOR A GROUP OF AREA COMPANIES. THE DOCUMENT READS, IN PART, AS FOLLOWS:

"THE COMPANY'S FINANCIAL ADVISORS HAVE STRONGLY RECOMMENDED THAT IT DISCONTINUE ITS OPERATIONS UNLESS ABLE TO PREDICT A PROMPT AND FAVOURABLE CHANGE. IN ADDITION, THE DESPERATE SALES SITUATION AND THE INCREDIBLE LOSSES MENTIONED PREVIOUSLY AND DESCRIBED ABOVE DO NOT HELP TO PAINT A VERY ENCOURAGING PICTURE. FINALLY, YOUR RECENT STRIKE VOTE HAS COMPLETED THE LIST OF NEGATIVE FACTORS. THIS ACTION ON YOUR PART IS BY FAR THE MOST CONCLUSIVE BECAUSE IT CLEARLY INDICATES A DISINTEREST IN WHETHER THE COMPANY REMAINS IN BUSINESS OR NOT.

THE PURPOSE OF THIS LETTER, THEREFORE, APART FROM PROVIDING YOU WITH THE FACTS AND INFORMATION NOTED ABOVE IS TO ADVISE THAT A STRIKE AGAINST THE COMPANY IN THE FACE OF THE PRESENT ATTEMPT TO REVITALIZE ITSELF, WILL LEAVE NO OTHER CHOICE THAN TO SHUT DOWN - PERMANENTLY.

WE REALIZE THAT IS IS YOUR LAWFUL RIGHT TO ENGAGE IN A STRIKE. HOWEVER, ONE MUST REALIZE WHAT THE CONSEQUENCES WILL BE IF SUCH A DECISION IS MADE. AS YOUR EMPLOYER, WE THEREFORE FELT OBLIGED TO PUT THIS CONSEQUENCE IN WRITING SO THAT IT MAY NOT BE MISUNDERSTOOD.

16. ON AUGUST 23, 1972, THE APPLICANTS COMMENCED A WORK STOPPAGE. AT THE SAME TIME, ACME CLOSED DOWN ITS OPERATIONS. BOTH WERE IN A CORRECT LEGAL POSITION TO TAKE THE RESPECTIVE STEPS.

17. ON THE SAME DAY, AUGUST 23, 1972, ACME SENT OUT A LETTER TO ALL EMPLOYEES ADVISING THAT A DECISION HAD BEEN MADE TO WIND UP THE

AFFAIRS OF THE COMPANY AS A DIRECT RESULT OF THE STRIKE. THE DECISION WAS MADE BY SEAWAY MULTI-CORP LIMITED. THE LETTER EXPRESSED THE INTENT OF ACME TO DISPOSE OF TOOLING EQUIPMENT AND CAPITAL ASSETS AS QUICKLY AS POSSIBLE. IT STATED THAT OBVIOUSLY SOME TEMPORARY EMPLOYMENT WOULD BE AVAILABLE AND THAT ASSISTANCE WOULD BE GIVEN IN THE EMPLOYEES' SEARCH FOR ALTERNATIVE EMPLOYMENT. THIS WAS FOLLOWED BY A FURTHER LETTER DATED AUGUST 30, 1972 COMPRISING SHUT DOWN.

18. BY LETTER DATED AUGUST 30, 1972, ACME NOTIFIED ALL ITS CUSTOMERS AND SUPPLIERS THAT THE BOARD OF DIRECTORS WAS FORCED TO ANNOUNCE THE LIQUIDATION OF THE COMPANY. AS THE RESULT OF THIS LETTER, MONROE AUTO EQUIPMENT COMPANY AND MAECO SHOCK ABSORBER LTD., IN LETTERS DATED SEPTEMBER 19 AND 25, 1972 RESPECTIVELY, ADVISED ACME THAT THEY CONSIDERED THEMSELVES NO LONGER BOUND BY THE AGREEMENT OF AUGUST 16, 1971 IN THE CIRCUMSTANCES.

19. ATTEMPTS WERE THEN MADE TO DISPOSE OF THE ACME BUSINESS EITHER IN WHOLE OR IN PART WITHOUT SUCCESS. AS THE RESULT OF THIS FAILURE, SEAWAY MULTI-CORP LIMITED DECIDED TO LIQUIDATE THE ACME UNDERTAKING WITH THE EXCEPTION OF THE SHOCK ABSORBER DEPARTMENT.

20. IN LATE OCTOBER 1972, EDWARD LEVY, ACTING ON BEHALF OF SEAWAY MULTI-CORP LIMITED, HAD ARRANGED WITH MONROE AND MAECO FOR THE MANUFACTURE AND SALE OF SHOCK ABSORBERS OF THE SAME GENERAL KIND AS THAT FORMERLY PRODUCED BY ACME UNDER THE LICENSING AND SALE AGREEMENT REFERRED TO ABOVE. IT WAS SUGGESTED TO HIM BY MONROE THAT IF A NEW COMPANY COULD BE ORGANIZED, THAT THEY MIGHT BUY THE PRODUCT.

21. A FURTHER DECISION WAS TAKEN AGAIN BY SEAWAY MULTI-CORP LIMITED TO INCORPORATE CANAC FOR THE PURPOSE OF CONTINUING THE MANUFACTURE OF SHOCK ABSORBERS. LETTERS PATENT WERE ISSUED DATED NOVEMBER 2, 1972. ACME SOLD TO CANAC ITS INVENTORY, WORK IN PROGRESS AND FINISHED MATERIAL RELATING TO THE SHOCK ABSORBER DEPARTMENT FOR \$868,000.00, SECURED BY A PROMISSORY NOTE. ACME ALSO LEASED TO CANAC CERTAIN CAPITAL EQUIPMENT, MACHINERY AND TOOLS, AND IN ADDITION, LEASED TO CANAC THAT PORTION OF THE PREMISES FORMERLY USED BY ACME FOR ITS SHOCK ABSORBER DEPARTMENT. THE SIGNING OFFICERS ON THE DOCUMENTS COVERING THESE TRANSACTIONS WERE FOR EACH CORPORATION THE SAME PERSONS.

22. CANAC IS PRESENTLY ENGAGED IN THE PRODUCTION OF SHOCK ABSORBERS AND TO THAT EXTENT IS CARRYING ON PART OF THE BUSINESS FORMERLY OPERATED BY ACME. THE OPERATION TAKES PLACE IN THE SAME AREA OF THE PLANT AS WAS USED BY ACME IN THE PRODUCTION OF SHOCK ABSORBERS. THE SUPERINTENDENT OF THE ACME SHOCK ABSORBERS DEPARTMENT AND ELEVEN OR SO OTHER SUPERVISORY STAFF OF THAT COMPANY, OCCUPY SIMILAR POSTS IN THE NEW COMPANY. CANAC IS, IN EFFECT, THE SHOCK ABSORBER DEPARTMENT OF ACME INCORPORATED BUT OTHERWISE CONTINUING IN MUCH THE SAME AS WAS BEFORE INCORPORATION.

23. ACME HAS ACCEPTED AN OFFER TO PURCHASE THE REAL PROPERTY AT WESTON ROAD "SUBJECT TO PRESENT TENANCIES". THE CLOSING DATE IS

SEPTEMBER 14, 1973. IT HAS ALSO SOLD A QUANTITY OF CAPITAL ASSETS IN THE FORM OF MACHINERY OF A SUBSTANTIAL VALUE.

24. ACME ALSO ENTERED INTO AN AGREEMENT WITH NORMAN LEVY ASSOCIATES INCORPORATED OF MICHIGAN FOR THE DISPOSITION OF A QUANTITY OF EQUIPMENT AND MACHINERY TOOLS. THIS COMPANY, INCIDENTALLY, IS NOT CONNECTED IN ANY WAY WITH SEAWAY MULTI-CORPORATION LIMITED. THE EVALUATION PLACED ON THE MACHINERY TO BE SOLD OR AUCTIONED BY THE NORMAN LEVY FIRM IS SOMETHING OVER \$1,000,000.00. THE AGREEMENT CONTAINED A PROVISION PERMITTING ACME TO USE SOME OF THE MACHINERY SOLD TO LEVY DURING THE PHASE OUT AND THE CLEAN UP INVOLVED IN LIQUIDATION.

25. THE FOREGOING EMBODIES THE CIRCUMSTANCES IN WHICH THE PRESENT APPLICATION UNDER SECTION 55 WITH A REFERENCE TO SECTION 1(4) WAS BROUGHT BEFORE THE BOARD.

26. IT IS OBVIOUS, ON THE FACE OF IT, THAT SECTION 1(4) MAKES NO PROVISION FOR THE INITIATION OF AN APPLICATION INVOLVING THE USE OF ITS TERMS BY THE BOARD. THIS BEING THE CASE, CONSIDERATION OF ITS PROVISIONS CAN AND HAS ONLY ARISEN DURING THE COURSE OF APPLICATIONS RESTING UPON OTHER SECTIONS OF THE ACT. IN THIS CASE, THE APPLICANTS HAVE USED AS A VEHICLE TO CARRY THE SECTION BEFORE THE BOARD, AN APPLICATION UNDER SECTION 55 OF THE ACT WHICH, AS HAS BEEN INDICATED, DEALS, IN SHORT, WITH THE PRESERVATION OF A UNION'S BARGAINING RIGHTS IN THE EVENT OF THE SALE OF A BUSINESS AS THAT IS DEFINED IN THE ACT.

27. THAT THE BOARD HAS THE RIGHT TO CONSIDER THE PROVISIONS OF SECTION 1(4) DURING AN INQUIRY INTO THE QUESTION OF THE SALE OF A BUSINESS UNDER SECTION 55, PARTICULARLY, WHERE A STRIKE IS INVOLVED, WAS DECIDED BY THE COURTS AS THE RESULT OF A MOTION BROUGHT BEFORE IT BY THE RESPONDENT HEREIN. (SEE RE CANAC SHOCK ABSORBERS LTD. AND INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) LOCAL 984 ET AL, [1973] 2 O.R. 596).

28. THE ARGUMENTS WAS ALSO MADE BY THE INTERVENER THAT IF SECTION 1(4) APPLIES AT ALL, IT APPLIES ONLY FOR THE PURPOSES OF THE ACT. THE SPECIFIC PURPOSE OF THE PRESENT APPLICATION WOULD BE FOR A DECLARATION UNDER SECTION 55 THAT A SALE HAD TAKEN PLACE BETWEEN ACME AND CANAC. IT WOULD FOLLOW THEREFORE, IT WAS ARGUED, THAT IF SECTION 1(4) BE APPLIED, SECTION 55 COULD NOT APPLY BECAUSE ACME AND CANAC, BEING TREATED AS ONE EMPLOYER, THERE COULD NOT BE A PURCHASER AND A VENDOR IN THE SALE.

29. THE BOARD FINDS ITSELF UNABLE TO ACCEPT THE ARGUMENT THAT THE SECTIONS ARE MUTUALLY EXCLUSIVE IN EVERY CASE. SECTION 1(4) SIMPLY AUTHORIZES THE BOARD TO TREAT THE DESIGNATED ENTITIES AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THE ACT. THERE IS, OF COURSE, NO SUGGESTION THAT ANY MERGER OR AMALGAMATION OF THE ENTITIES IS DEEMED TO TAKE PLACE UNDER THAT SECTION. INDEED, IT IS EVIDENT THAT THERE MUST BE AT LEAST TWO VIABLE ENTITIES AT ALL TIMES IN ORDER FOR THE

BOARD TO BE ABLE TO USE SECTION 1(4). THE FACT THAT ONE COMPANY MAY SELL PART OF ITS BUSINESS TO ANOTHER COMPANY, WHERE BOTH REMAIN SUBSISTING COMPANIES, DOES NOT NECESSARILY MEAN THAT THEY CANNOT, NOTWITHSTANDING THAT THEY MAY BE VENDOR AND PURCHASER WITHIN THE MEANING OF SECTION 55, BE TREATED AT THE SAME TIME, IF THE CONDITIONS OF SECTION 1(4) BE OTHERWISE MET, AS ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. THE CORPORATE ENTITIES REMAIN DISTINCT CORPORATIONS CAPABLE OF INDEPENDENT COMMERCIAL TRANSACTIONS, EVEN THOUGH THEY MAY BE TREATED AS ONE EMPLOYER UNDER THE ACT.

30. THAT BEING SO, HOWEVER, THERE REMAINS, AMONG OTHERS, A QUESTION ARISING OUT OF THE REQUEST BY COUNSEL FOR THE APPLICANTS DURING THE COURSE OF ARGUMENT THAT THE BOARD FIND THAT NO SALE TOOK PLACE AND THAT THIS IS A SECTION 1(4) SITUATION. HE ASKED THAT SINCE ALL THE CONDITIONS OF SECTION 1(4) HAD BEEN MET, THE APPLICATION BE DISMISSED. THE REASON FOR THE REQUEST IS BASED, OF COURSE, UPON THE VIEW THAT IN THE EVENT OF THE FINDING OF A SALE, THE APPLICANTS WOULD SIMPLY HAVE THE RIGHT TO GIVE NOTICE TO BARGAIN WHEREAS, IT WAS ARGUED, IF THERE WAS FOUND TO BE ONLY ONE EMPLOYER, THEN THE APPLICANTS WOULD BE IN A LEGAL STRIKE POSITION VIS A VIS THE ONE EMPLOYER.

31. THE REQUEST RAISES A PROCEDURAL AS WELL AS A SUBSTANTIVE PROBLEM. THE ANSWER TO THE LATTER IS CONTAINED IN PARAGRAPH 29 ABOVE IN WHICH THE BOARD FINDS THAT SECTIONS 55 AND 1(4) OF THE ACT ARE NOT MUTUALLY EXCLUSIVE. THEREFORE, THE REQUESTED DISMISSAL SOUGHT BY THE APPLICANTS WOULD NOT BE NECESSARY, EVEN IF PRACTICABLE, IN ORDER TO FIND THAT A 1(4) SITUATION EXISTS. WE WILL RETURN TO THE PROCEDURAL MATTER LATER.

32. AS TO THE MATTER OF A SALE, AS ALREADY NOTED, IT WAS CONCEDED BY THE RESPONDENT AND THE INTERVENER, AT THE COMMENCEMENT OF THESE PROCEEDINGS, THAT THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT HAD TAKEN PLACE BETWEEN ACME AND CANAC. THE RESPONDENT FURTHER CONCEDED THAT, SINCE A SALE WITHIN THE ACT HAD, IN ITS OPINION, OCCURRED, IT WAS PREPARED TO RECOGNIZE THAT, AS THE ACT PROVIDES, THE APPLICANTS WERE ENTITLED TO GIVE TO CANAC NOTICE OF DESIRE TO BARGAIN. CANAC WAS, ACCORDINGLY, PREPARED TO BARGAIN WITH THE APPLICANTS WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

33. THE APPLICANTS, ALTHOUGH ASKING FOR A DISMISSAL OF THE APPLICATION UNDER SECTION 55, NEVERTHELESS CONCEDED IN THE COURSE OF ARGUMENT THAT, ASSUMING SEPARATE IDENTITY BETWEEN PREDECESSOR AND SUCCESSOR, IT IS CERTAINLY "AT THE VERY LEAST, A SALE". LATER IN DEALING WITH THE QUESTION OF THE APPLICABILITY OF SECTION 1(4), COUNSEL FOR THE APPLICANT SUBMITTED THAT THERE MUST BE MORE THAN ONE CORPORATION OR FIRM "AND THAT CONDITION IS OBVIOUSLY PRESENT ON THE EVIDENCE". THE ASSUMPTION HAVING BEEN FULFILLED BY THE EVIDENCE, THE CONCLUSION AS TO A SALE MUST FOLLOW.

34. THE BOARD FINDS, QUITE APART FROM THE CONCESSION OF THE RESPONDENT

AND THE STATEMENTS OF THE APPLICANTS, THAT THE TRANSACTIONS BETWEEN ACME AND CANAC, DONE EVEN AS THEY WERE UNDER THE TIGHT CORPORATE CONTROL AND DIRECTION OF SEAWAY MULTI-CORP LIMITED, CONTAIN ALL THE INGREDIENTS OF A SALE OF PART OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT.

35. WE TURN NOW TO A CONSIDERATION OF THE EVIDENCE AS IT HAS TO DO WITH SECTION 1(4) OF THE ACT.

36. IT IS COMMON GROUND THAT THERE ARE THREE PRECONDITIONS TO BE MET BEFORE THE BOARD MAY TREAT TWO OR MORE CORPORATIONS AS CONSTITUTING ONE EMPLOYER. IT SHOULD BE NOTED, INCIDENTALLY, THAT THE PRESENCE OF THOSE CONDITIONS DOES NOT IN ANY WAY COMPEL THE BOARD TO TREAT THE CORPORATIONS CONCERNED AS ONE EMPLOYER. THE SECTION LEAVES TO THE BOARD'S DISCRETION THE DECISION AS TO WHETHER TO TREAT A NUMBER OF EMPLOYERS AS CONSTITUTING ONE EMPLOYER, EVEN IN THE PRESENCE OF THE PRECONDITIONS.

37. THE PRECONDITIONS ARE THAT THERE BE MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION INVOLVED; THAT THE CORPORATIONS, ETC. ARE UNDER COMMON CONTROL OR COMMON DIRECTION AND THAT ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES BE CARRIED ON BY THE EMPLOYERS CONCERNED.

38. THERE IS NO DOUBT UPON THE EVIDENCE HEREIN THAT MORE THAN ONE CORPORATION IS INVOLVED. IT IS, FURTHER, CONCEDED BY THE RESPONDENT THAT ACME AND CANAC ARE UNDER COMMON CONTROL AND COMMON DIRECTION. WE WOULD ADD THAT, IN THE OPINION OF THE BOARD, THESE COMMON ELEMENTS COVER, IN THE PRESENT CASE, THE MATTER OF LABOUR RELATIONS.

39. IT IS OBVIOUS THAT IF ALL THAT WE WERE CONCERNED WITH WAS THE SPLIT OFF OF THE SHOCK ABSORBER DEPARTMENT FROM ACME TO THE NEWLY INCORPORATED CANAC, WHILE ACME CONTINUED TO PRODUCE OTHER AUTOMOTIVE INDUSTRY PRODUCTS, AMONG OTHER PRODUCTS, THAT THE TWO COULD BE SAID TO BE CARRYING ON ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES UNDER THE HEGEMONY OF SEAWAY MULTI-CORP LIMITED.

40. THE DIFFICULTY LIES IN THE QUESTION AS TO WHETHER ACME, IN THE CIRCUMSTANCES, CAN BE SAID TO BE "CARRYING ON" A BUSINESS OR ACTIVITY AT ALL. IN OTHER WORDS, CAN IT BE SAID THAT A CORPORATION, WHICH IS PLAINLY IN THE PROCESS OF LIQUIDATION, IS AT THE SAME TIME "CARRYING ON" THAT BUSINESS WITHIN THE MEANING OF SECTION 1(4) OF THE ACT. IT IS NOT DISPUTED, OF COURSE, THAT ACME HAS NOT SURRENDERED ITS CHAPTER.

41. MR. EDWARD LEVY, WHO WAS CALLED BY THE APPLICANTS, WHEN ASKED IF ACME HAD CARRIED ON BUSINESS SINCE THE AUGUST 30TH, REPLIED THAT IT HAD NOT "IN THE TRUE SENSE OF THE WORD". HE STATED THAT MANUFACTURING OR OPERATING WAS CARRIED ON SINCE THAT DATE ONLY IN THE PREPARATION OF INVENTORY FOR LIQUIDATION IN A SALVAGE OPERATION. THIS OPERATION INVOLVED THE RUNNING OF MACHINES. THE MACHINES WERE OPERATED BY SUPERVISORY STAFF FOLLOWING AUGUST 30TH AND AT LEAST UNTIL MARCH 15TH, 1973, WITH ANTICIPATED CONTINUATION UNTIL MID APRIL 1973. SOME OF THIS

SALVAGE OPERATION WAS CARRIED OUT ON THE INVENTORY IN THE SHOCK ABSORBER DEPARTMENT BY PERSONS OTHER THAN CANAC EMPLOYEES.

42. THE SALVAGE OPERATION INVOLVED THE FINISHING OF CERTAIN GOODS WHICH WERE NOT COMPLETED AT THE TIME OF THE SHUT DOWN IN AUGUST. AS WAS OBSERVED EARLIER, THE AGREEMENT WITH NORMAN LEVY ASSOCIATES INCORPORATED PROVIDED FOR THE USE BY ACME OF CERTAIN OF THE MACHINERY SOLD UNDER THAT AGREEMENT, FOR THE EXPRESS PURPOSE OF COMPLETING CERTAIN WORK IN PROCESS AND ORDERS ON HAND. THE RESERVED MACHINERY WAS, IN FACT, IN USE FOR THE PURPOSES STATED AS LATE AS MID APRIL 1973. CERTAIN PERISHABLE TOOLS ALSO REFERRED TO IN THE AGREEMENT WERE USED BY ACME DURING THE SALVAGING OPERATION. A RUNNING INVENTORY OF THESE TOOLS HAS BEEN KEPT BY ACME AS REQUIRED IN THE AGREEMENT, CONFIRMING THE FACT THAT SUCH TOOLS WERE USED AFTER AUGUST 30, 1972.

43. THE EVIDENCE CLEARLY ESTABLISHES THAT THE SALVAGE OPERATION INCLUDED THE COMPLETION OF OUTSTANDING ORDERS THAT HAD NOT BEEN COMPLETED AS OF AUGUST 30, 1972 THROUGH THE OPERATION OF FORMER ACME MACHINES AND TOOLS.

44. THE BOARD FURTHER FINDS THAT BECAUSE OF THE CONTINUING USE OF A MACHINERY IN THE COMPLETION OF WORK IN PROGRESS IN ORDER TO FILL OUTSTANDING ORDERS WHICH REMAINED AT AUGUST 30, 1971 INCLUDING WORK ON SHOCK ABSORBERS, WITH A VIEW AT LEAST TO CUTTING LOSSES ON THESE ITEMS IF NOT INDEED TURNING A PROFIT THAT ACME WAS CARRYING ON AN ACTIVITY OR BUSINESS ALBEIT WITH A VIEW TO EVENTUAL LIQUIDATION.

45. THE CONCLUSION IS UNAVOIDABLE THAT THE ACTIVITIES OF CANAC AND ACME DURING THE PERIOD FROM AUGUST 30, 1972 UP TO AND INCLUDING THE HEARING OF THE APPLICATION ARE RELATED ACTIVITIES. THIS BECOMES ABUNDANTLY CLEAR WHEN ACCOUNT IS TAKEN OF THE FACT THAT THE LIQUIDATION OPERATIONS OF THE ACME AND THE COMMENCEMENT OF OPERATIONS BY CANAC IN THE FORMER'S SHOCK ABSORBER DEPARTMENT PRODUCING A LIKE PRODUCT. ALL TOOK PLACE UNDER THE GUIDANCE AND CONTROL OF SEAWAY MULTI-CORP LIMITED WHICH IN THE EXERCISE OF ITS OVERALL POWER REALLY ONLY SLIPPED ITS HAND OUT OF THE ACME GLOVE INTO THE LESS ELABORATE CANAC GLOVE.

46. ALL THE PRECONDITIONS REQUIRED BEFORE THE BOARD MAY EXERCISE ITS DISCRETION AS TO WHETHER TO TREAT THE TWO CORPORATIONS, ACME AND CANAC, AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT ARE THEREFORE PRESENT AND HAVE BEEN PRESENT SINCE THE MOMENT WHEN THE FIRST EMPLOYEE WAS HIRED UNDER THE NAME OF CANAC. THE BOARD THEREFORE FINDS THAT ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES WERE, AT ALL TIMES MATERIAL TO THIS APPLICATION, CARRIED ON BY OR THROUGH ACME AND CANAC UNDER COMMON CONTROL AND COMMON DIRECTION WITHIN THE MEANING OF SECTION 1 SUBSECTION (4) OF THE LABOUR RELATIONS ACT.

47. NOTWITHSTANDING THE ULTIMATE POSITION OF THE APPLICANT IN WHICH IT REQUESTED DISMISSAL OF THE APPLICATION UNDER SECTION 55

FOLLOWING A FINDING THAT THE SITUATION UNDER REVIEW FALLS WITHIN THE PROVISIONS OF SECTION 1(4) OF THE ACT, THE BOARD HAS CONSIDERED IT PROPER AND NECESSARY TO DEAL WITH THE FACTS AS THEY RELATE TO BOTH SECTIONS AND TO SET OUT ITS FINDINGS WITH RESPECT THERETO.

48. THE BOARD SO DECIDED BECAUSE NOT ONLY WAS SECTION 55 CHOSEN BY THE APPLICANT AS THE VEHICLE UPON WHICH TO BRING SECTION 1(4) BEFORE THE BOARD BUT BECAUSE IT WAS RELIED UPON BY THE RESPONDENTS, AS INDICATED EARLIER, AS CONSTITUTING A BAR TO THE APPLICATION OF SECTION 1(4) ON THE GROUNDS THAT THE SECTIONS ARE MUTUALLY EXCLUSIVE.

49. IT WAS COMMON GROUND THAT THE RELEVANT PORTION OF SECTION 55 IS SUBSECTION (3). UNDER THAT SUBSECTION, THE BOARD HAS WIDE POWERS TO DEAL WITH BARGAINING RIGHTS OF THE TRADE UNION CONCERNED "OTHERWISE" THAN AS INITIALLY OR TENTATIVELY PROVIDED BY THE SUBSECTION.

50. THE BOARD, LEAVING ASIDE THE MOTION FOR DISMISSAL, HAS NO HESITATION IN STATING THAT IN ALL THE CIRCUMSTANCES OF THIS CASE ACME AND CANAC MUST BE TREATED BY THE BOARD AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT PURSUANT TO THE PROVISIONS OF SECTION 1(4) OF THE ACT.

51. THIS BRINGS THE BOARD FACE TO FACE WITH THE PROCEDURAL PROBLEM ARISING OUT OF THE REQUEST FOR DISMISSAL OF THE APPLICATION BY THE APPLICANT. THE MATTER HAS CAUSED THE BOARD CONSIDERABLE CONCERN, PARTICULARLY SINCE THERE IS NO MACHINERY BY WHICH AN APPLICANT MAY DIRECTLY INVOKE THE PROVISIONS OF SECTION 1(4) OF THE ACT.

52. THE REQUEST IS, OF COURSE, BASED UPON THE APPLICANT'S REJECTION OF ITS ALTERNATIVE POSITION WITH RESPECT TO THE SALE OF A BUSINESS. ITS FINAL POSITION IS, IN EFFECT, THAT, ON THE FACTS, NO SALE TOOK PLACE AND THE BOARD SHOULD THEREFORE DISMISS THE APPLICATION LEAVING ONLY A FINDING THAT ACME AND CANAC ARE ONE EMPLOYER. THE FINDINGS OF THE BOARD WITH REGARD TO THE QUESTIONS OF SALE OF A BUSINESS AND OF THE APPLICABILITY OF SECTION 1(4) HAVE BEEN SET OUT ABOVE. THE BOARD CANNOT, IF IT IS TO BE CONSISTENT WITH ITS OWN FINDINGS, DISMISS THE APPLICATION ON THE GROUND URGED BY THE APPLICANT NOTWITHSTANDING THE APPLICANT'S REQUEST.

53. EFFECT MUST THEREFORE BE GIVEN TO THE FINDINGS OF THE BOARD SET OUT ABOVE.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: OCTOBER 11, 1973.

THIS IS AN APPLICATION MADE UNDER THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT. THE MAJORITY, IN ITS DECISION, MADE A FINDING THAT THERE WAS A SALE OF PART OF THE BUSINESS FROM THE INTERVENER TO THE RESPONDENT, WITHIN THE MEANING OF SECTION 55 OF THE ACT.

AT THE CONCLUSION OF THE HEARING, HOWEVER, COUNSEL FOR THE APPLICANT REQUESTED THE BOARD TO DISMISS ITS APPLICATION.

IN ACCORDANCE WITH SUCH REQUEST, AND INDEED IN ACCORDANCE WITH THE INVARIABLE PRACTICE OF THE BOARD IN DEALING WITH SUCH MATTERS AS A REQUEST FOR WITHDRAWAL OF AN APPLICATION BEFORE THE BOARD. I WOULD GRANT THE REQUEST OF COUNSEL FOR THE APPLICANT, AND DISMISS THE APPLICATION.

1475-71-U: DONALD G. GEBBIE AND J. MICHAEL LONGMOORE (COMPLAINANTS) V. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: F.W. PARK, M. MATHIAS, J.M. LONGMOORE AND D.G. GEBBIE FOR THE APPLICANT; L.A. MACLEAN, JACK TAYLOR AND STEVEN HARRIS FOR UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; DONALD J.M. BROWN, GLENN LESLIE AND J. PATERSON FOR FORD MOTOR COMPANY OF CANADA, LIMITED.

DECISION OF THE BOARD: OCTOBER 11, 1973.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 79 OF THE LABOUR RELATIONS ACT WHICH CLAIMS THAT THE COMPLAINANTS, DONALD G. GEBBIE AND J. MICHAEL LONGMOORE, HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT, WHICH IS THE SECTION THAT IMPOSES A DUTY OF FAIR REPRESENTATION ON A TRADE UNION.

2. IN AN INTERIM DECISION OF THIS BOARD REPORTED 1972 OLRB REPS, P. 828 ALLEGATIONS WITH RESPECT TO SECTION 37 AND 58(A) OF THE LABOUR RELATIONS ACT WERE DISPOSED OF AND THIS DECISION IS CONCERNED ONLY WITH THE ALLEGATIONS MADE WITH RESPECT TO SECTION 60.

3. WE PROPOSE TO OUTLINE GENERALLY THE BASIC FACTS LEADING UP TO THIS APPLICATION AND THEN DEAL WITH THE APPLICABLE PRINCIPLES GOVERNING SECTION 60 APPLICATIONS, AND THEN EXAMINE THE FACTS IN GREATER DETAIL.

4. THE BASIC FACTS WHICH LEAD TO THIS APPLICATION ARE AS FOLLOWS:

5. ON JUNE 17, 1971, AT APPROXIMATELY NOON, A GROUP OF EMPLOYEES IN THE HOT TEST AREA AT THE FORD MOTOR PLANT #2 IN WINDSOR, ONTARIO, WALKED OUT OF THE PLANT IN PROTEST AGAINST THE WORKING CONDITIONS.

6. ON THE WAY OUT THEY WERE JOINED BY OTHERS INCLUDING THE COMPLAINANT, LONGMOORE, WHO ALTHOUGH HE DID NOT WORK IN THE HOT TEST AREA, JOINED THE PROTESTING EMPLOYEES IN THE WALKOUT. ON REACHING THE OUTSIDE OF THE PLANT THERE WAS A LOT OF CONFUSION - SOME OF THE PROTESTORS MILLED ABOUT, SOME WENT TO A LOCAL TAVERN AND OTHERS BEGAN TO DEMONSTRATE. A NUMBER OF EMPLOYEES MADE SIGNS AND PICKETED IN AN EFFORT TO STOP THE 4:00 O'CLOCK SHIFT FROM COMING TO WORK.

7. THE COMPLAINANT, GEBBIE, WAS RETURNING FROM HIS LUNCH HOUR WHEN HE NOTICED A NUMBER OF PEOPLE MILLING ABOUT THE PLANT GATE. HE WAS TOLD THAT THERE WAS A STRIKE AND DECIDED NOT TO RETURN TO WORK, BUT DETERMINED TO WAIT AND SEE WHAT DEVELOPED. AT THAT POINT HE HAD NOTHING TO DO WITH THE PROTEST OR EVENTS LEADING TO THE WALKOUT; HE DID NOT WORK IN THE HOT TEST AREA. AFTER HE HAD HEARD THE PROTESTERS DISCUSSING THE ISSUE WITH RESPECT TO THE HOT TEST AREA HE CONCLUDED THAT THE PROTESTERS WERE JUSTIFIED IN THEIR ACTIONS AND HE DECIDED TO JOIN THE WALKOUT.

8. BOTH GEBBIE AND LONGMOORE PARTICIPATED IN THE PICKETING AT THE PLANT GATES THAT AFTERNOON.

9. THAT NIGHT, A MEETING, ARRANGED BY THE PROTESTERS, TOOK PLACE AT THE UNION HALL. IT WAS NOT A MEETING OFFICIALLY CALLED BY THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200 (HEREINAFTER REFERRED TO AS THE "UAW"), ALTHOUGH CERTAIN PERSONS WHO WERE ACTIVE IN THE UNION WERE PRESENT. THE MEETING WAS ADVISED BY CERTAIN ACTIVE UNIONISTS THAT THE COMPANY WAS GOING TO REMEDY THE CONDITIONS THAT LED TO THE PROTEST - NAMELY THE INSTALLATION OF FANS, AND THE REDUCTION OF THE NUMBER OF MEN ON ONE PORTION OF THE ASSEMBLY LINE FROM THREE TO TWO. THERE WAS ALSO SOME QUESTION AS TO THE CONDITION OF THE FLOOR IN THE HOT TEST AREA AND THAT WAS DISCUSSED.

10. AT THE MEETING THERE WAS SHOUTING, AND BRAWLING AND IT WAS A SCENE OF CONSIDERABLE CONFUSION.

11. AT THE CONCLUSION OF THE EVENING MEETING IT WAS DECIDED BY A SMALL GROUP TO PICKET THE PLANT AGAIN THE NEXT MORNING AND ALSO TO HAVE A FURTHER MEETING. THE NEXT MORNING WHICH WAS A FRIDAY, PICKETS AGAIN APPEARED AT THE PLANT GATES WITH THE EFFECT THAT MANY EMPLOYEES ON THE FRIDAY SHIFT DID NOT REPORT FOR WORK. AGAIN, THE COMPLAINANTS, GEBBIE AND LONGMOORE, PARTICIPATED IN THAT PICKETING.

12. ON THE SUNDAY MORNING AT AN OFFICIAL MEETING CALLED BY THE UNION AT THE WINDSOR ARENA, A DECISION WAS REACHED TO RETURN TO WORK, AND ON MONDAY MORNING, JUNE 21, 1971, THE EMPLOYEES RETURNED TO WORK AND ENDED THE ILLEGAL STRIKE.

13. UPON THEIR RETURN TO WORK THE PERSONS WHO HAD PARTICIPATED IN THE WALKOUT WERE INTERVIEWED BY THE COMPANY. PERSONS INTERVIEWED WERE REPRESENTED BY UNION OFFICIALS DURING THEIR INTERVIEWS. IN SOME CASES TWO UNION OFFICIALS WERE PRESENT AT THE MEETINGS, ALTHOUGH IT HAD BEEN THE PREVIOUS PRACTICE TO HAVE ONLY ONE PRESENT. BOTH GEBBIE AND LONGMOORE WERE INTERVIEWED AND BOTH WERE ASSISTED BY UNION REPRESENTATIVES. PRIOR TO THE INTERVIEW THEY WERE BRIEFLY PREPARED BY THE UNION REPRESENTATIVES AS TO WHAT THEIR DECORUM AND CONDUCT OUGHT TO BE DURING THE INTERVIEWS. MR. LONGMOORE STATED THAT GEORGE LABUTE, THE UNION COMMITTEEMAN, MADE REPRESENTATIONS ON HIS BEHALF AND POINTED OUT LONGMOORE'S GOOD RECORD TO THE COMPANY.

14. THE INTERVIEWS WITH GEBBIE AND LONGMOORE DID NOT PROCEED SMOOTHLY. DURING THE COURSE OF HIS INTERVIEW GEBBIE ATTEMPTED TO RESIGN BUT WAS DISSUADED FROM SO DOING BY THE UNION REPRESENTATIVE. DURING THE COURSE OF LONGMOORE'S MEETING THERE WAS A DISPUTE ABOUT A PERSONAL MATTER RELATING TO LONGMOORE'S FATHER AND TO THE RELATIONSHIP BETWEEN THE COMPLAINANT, LONGMOORE, AND HIS FATHER WHO HAD BEEN A FORMER MEMBER OF FORD MANAGEMENT. BOTH INTERVIEWS CONCLUDED WITH FORD RESERVING ITS DECISION AS TO ANY ACTION FORD MIGHT TAKE WITH RESPECT TO THE PARTICIPATION OF LONGMOORE AND GEBBIE IN THE WALKOUT.

15. SIMILAR INTERVIEWS WERE HELD WITH OTHER PARTICIPANTS IN THE UNLAWFUL STRIKE AND THOSE INTERVIEWS CONCLUDED IN THE SAME FASHION.

16. AT THE END OF JUNE FORD ANNOUNCED ITS DECISION WITH RESPECT TO THE INDIVIDUALS INVOLVED IN THE WORK STOPPAGE. APPROXIMATELY 46 RECEIVED DISCIPLINARY SUSPENSIONS AND 10 WERE FIRED. THE FIRINGS WERE ANNOUNCED TO THE INDIVIDUAL EMPLOYEES AT INTERVIEWS HELD BY THE COMPANY AND AT THOSE FINAL INTERVIEWS UNION REPRESENTATIVES ATTENDED WITH THOSE EMPLOYEES.

17. ON JULY 6TH, EMPLOYEES WHO HAD BEEN FIRED WERE CALLED TO THE UNION HALL AND WERE TOLD THAT THEY HAD THE RIGHT TO FILE A GRIEVANCE. THEY THEN SIGNED GRIEVANCES PROTESTING THEIR DISCHARGE. NOT ALL WHO WERE FIRED ATTENDED - INDEED, SOME WHO WERE FIRED HAD RESIGNED.

18. AT THIS POINT IT IS APPROPRIATE TO DEAL WITH THE ISSUE OF "BLACK BALLING" WHICH AROSE DURING THE HEARING. IT APPEARS THAT WHEN EMPLOYEES ARE DISCHARGED IT MAY AFFECT THEIR FUTURE PROSPECTS FOR EMPLOYMENT. IN THE CASE OF A DISCHARGED EMPLOYEE IT IS THE PRACTICE OF THE COMPANY TO NOTE THE FACT OF DISCHARGE ON HIS EMPLOYMENT RECORD, AND IF INQUIRIES ARE MADE BY POTENTIAL EMPLOYERS OF SUCH FORMER EMPLOYEES, THE RECORD, INCLUDING THE FACT OF DISCHARGE, WILL BE DISCLOSED. THAT PRACTICE UNDERSTANDABLY AFFECTS THE FUTURE POSSIBILITIES OF FORMER FORD EMPLOYEES, AND IT IS THIS PRACTICE THAT GIVES RISE TO THE TERM "BLACK BALLING".

19. IN SOME CASES WHEN AN EMPLOYEE IS DISCHARGED THE UNION IS ABLE TO NEGOTIATE A RESIGNATION AS DISTINGUISHED FROM A DISCHARGE. IN SUCH CIRCUMSTANCES THE EMPLOYEE'S RECORD WILL NOT CONTAIN ANY REFERENCE TO DISCHARGE. IT IS MERELY NOTED THAT THE EMPLOYEE TERMINATED HIS EMPLOYMENT. IN THE LATTER SITUATION THE FUTURE EMPLOYMENT PROSPECTS OF AN EX-FORD EMPLOYEE ARE NATURALLY INCREASED BECAUSE THE FACT OF DISCHARGE IS NOT BROUGHT TO THE ATTENTION OF POTENTIAL EMPLOYERS WHO MAKE INQUIRIES.

20. IN THE SITUATION GIVING RISE TO THIS PROCEEDING THERE WAS SOME INSTANCES WHERE EMPLOYEES WERE DISCHARGED AND THE UNION WAS THEN SUCCESSFUL IN NEGOTIATING THEIR RESIGNATION.

21. AS INDICATED, LONGMOORE, GEBBIE AND OTHERS WHO HAD BEEN DIS-

CHARGED SIGNED GRIEVANCES PROTESTING THEIR DISCHARGE. AFTER RECEIVING THE GRIEVANCES THE UNION COMMENCED TO NEGOTIATE WITH THE COMPANY WITH RESPECT TO THE DIFFERENT GRIEVANCES.

22. THE NEGOTIATIONS WERE CONDUCTED IN ACCORDANCE WITH THE NORMAL PRACTICE THAT HAD PREVIOUSLY BEEN FOLLOWED BY THE PARTIES IN DISCUSSING GRIEVANCES. THERE ARE TWO UNION COMMITTEES INVOLVED IN GRIEVANCE MATTERS - THE NEGOTIATING COMMITTEE THAT MEETS WITH THE COMPANY AND THE PLANT COMMITTEE TO WHOM THE NEGOTIATING COMMITTEE REPORTS. THE PLANT COMMITTEE IS THE DECISION-MAKING BODY AND IT MAKES THE FINAL DECISION AS TO WHETHER GRIEVANCES SHOULD PROCEED TO ARBITRATION. THIS HAD BEEN THE PRACTICE AND THERE WAS NO DEPARTURE FROM THAT PRACTICE IN DEALING WITH LONGMOORE AND GEBBIE AS WELL AS THE OTHER DISCHARGE GRIEVANCES. THE NEGOTIATING COMMITTEE IS A SMALLER COMMITTEE AND INCLUDES A PLANT CHAIRMAN FROM EACH PLANT AND THE UNION PRESIDENT. THE PLANT COMMITTEE IS A LARGE GROUP AND INCLUDES SOME MEMBERS OF THE NEGOTIATING COMMITTEE. PERSONS WHO SERVE ON BOTH COMMITTEES ARE ELECTED OFFICIALS OF THE UNION.

23. THERE IS VERY LITTLE DISPUTE ABOUT WHAT OCCURRED NEXT, ALTHOUGH THERE IS SOME DIFFERENCES AS TO THE EXACT TIMING OF THE MEETINGS. ON WEDNESDAY MORNING, JULY 7TH, THERE WAS A MEETING OF THE NEGOTIATING COMMITTEE TO WHICH THE DISCHARGED GRIEVORS WERE INVITED. AT THAT MEETING THE NEGOTIATING COMMITTEE REPORTED TO THE GRIEVORS THAT THEY HAD MET WITH THE COMPANY AND ALSO REPORTED THE COMPANY'S STANCE AS IT AFFECTED THE INDIVIDUAL GRIEVORS. THE COMMITTEE REVIEWED THE INDIVIDUAL SITUATIONS WITH EACH GRIEVOR IN WHAT APPEARS TO HAVE BEEN AN ATTEMPT TO LEARN SOME FURTHER FACTS FROM THE GRIEVORS TO ASSIST THE UNION IN ITS NEGOTIATIONS WITH THE COMPANY. THE NEGOTIATING COMMITTEE INFORMED THE GRIEVORS THAT THEY WOULD RETURN TO A MEETING WITH THE COMPANY TO DISCUSS THE MATTER FURTHER. LONGMOORE WAS PRESENT AT THAT MEETING, BUT GEBBIE WAS NOT.

24. THE UNCONTRADICTED EVIDENCE IS THAT AT THE MEETINGS WITH THE COMPANY THE UNION ATTEMPTED TO NEGOTIATE THE RETURN TO WORK OF ALL THE GRIEVORS. IT BARGAINED WITH THE COMPANY AND WAS SUCCESSFUL IN HAVING THE DISCHARGES OF A NUMBER OF THE GRIEVORS REVOKED OR AMENDED TO A SUSPENSION. IN ADDITION, THE COMMITTEE WAS ABLE TO NEGOTIATE RESIGNATIONS FOR SOME EMPLOYEES WHO WERE DISCHARGED.

25. IN OUR VIEW THE SECURING OF A RESIGNATION, RATHER THAN AN OUTRIGHT DISCHARGE FOR AT LEAST TWO OF THE GRIEVORS, SNIVELY AND HARTLOFF, CAN ONLY BE TERMED A SUCCESS ON THE PART OF THE NEGOTIATING COMMITTEE. THE EVIDENCE INDICATED THAT MR. HARTLOFF WAS EXTREMELY DOMINANT IN THE ACTIVITIES SURROUNDING THE UNLAWFUL STRIKE, AND WE ARE SATISFIED THAT A BOARD OF ARBITRATION WOULD HAVE UPHELD THE DECISION OF THE COMPANY TO DISCHARGE HIM. INsofar AS MR. SNIVELY WAS CONCERNED, HE PERSONALLY TESTIFIED AND HIS CONDUCT DURING THE WALKOUT WAS SUCH THAT AGAIN WE HAVE NO DOUBT THAT A DECISION TO DISCHARGE HIM WAS WARRANTED AND THAT A BOARD OF ARBITRATION WOULD HAVE UPHELD THE DISCHARGE.

26. THE BARGAINING CONTINUED AND THE NEGOTIATING COMMITTEE AS WELL

AS DISCUSSING THE MATTERS WITH THE GRIEVORS ALSO RETURNED TO DISCUSS THE MATTER WITH THE PLANT COMMITTEE. EVENTUALLY, THE UNION WAS SUCCESSFUL IN HAVING THE DISCHARGE OF ALL THE GRIEVORS, WITH THE EXCEPTION OF LONGMOORE, GEBBIE AND ONE KNIGHTON, REVOKED. THE NEGOTIATING COMMITTEE REPORTED TO THE PLANT COMMITTEE, WHICH IN TURN DECIDED THAT THE NEGOTIATING COMMITTEE RETURN TO THE COMPANY. THIS THE NEGOTIATING COMMITTEE DID, AND IT APPEARED THAT THE COMPANY WAS GOING TO HOLD FIRM WITH THE DISCHARGES OF LONGMOORE AND GEBBIE, BUT THAT THERE WAS SOME POSSIBILITY OF KNIGHTON RECEIVING A SUSPENSION IF THE UNION AGREED NOT TO PROCEED TO ARBITRATION WITH LONGMOORE AND GEBBIE. THE NEGOTIATING COMMITTEE THEN RETURNED TO THE PLANT COMMITTEE AND ON THURSDAY, JULY 8TH, KNIGHTON AND LONGMOORE WERE REQUESTED TO, AND DID ATTEND A MEETING OF THE PLANT COMMITTEE. GEBBIE COULD NOT BE CONTACTED ALTHOUGH EFFORTS WERE MADE TO CONTACT HIM BY TELEPHONE.

27. THERE APPEARS TO HAVE BEEN SOME DISCUSSION AMONG THE MEMBERS OF THE PLANT COMMITTEE ABOUT THE COMPANY'S POSITION, AND THEN A SEPARATE DISCUSSION WAS HELD BETWEEN MEMBERS OF THE PLANT COMMITTEE AND KNIGHTON AND LONGMOORE. THIS MEETING OF THE PLANT COMMITTEE IS CRUCIAL IN THE EVENTS BECAUSE IT WAS AT THIS MEETING THAT A DECISION WAS REACHED WITH RESPECT TO WHETHER THE UNION WOULD PROCEED TO ARBITRATION WITH THE CASES OF LONGMOORE, GEBBIE AND KNIGHTON.

28. AFTER HARD BARGAINING NEGOTIATIONS BETWEEN THE COMPANY AND UNION HAD REACHED THE POINT WHERE THE ONLY ISSUE REMAINING WAS THE DISPOSITION OF THE GRIEVANCES WITH RESPECT TO THE THREE REMAINING GRIEVORS. AT THE PLANT MEETING THERE OCCURRED A DISCUSSION ABOUT THE MERITS OF THE CASE OF EACH OF THE GRIEVORS AND CONSIDERATION WAS GIVEN AS TO THEIR INDIVIDUAL CHANCES OF SUCCESS BEFORE A BOARD OF ARBITRATION OR AN UMPIRE. ULTIMATELY, A MOTION WAS PUT AND A VOTE WAS TAKEN AND AS A RESULT OF THE VOTE IT WAS DECIDED, WITH TWO DISSENTING VOTES, THAT THE UNION NOT PROCEED TO ARBITRATION WITH THE GRIEVANCES OF LONGMOORE AND GEBBIE. THERE IS NO SUGGESTION THAT ANYTHING OTHER THAN THE ASSESSMENT OF THE MERITS OF EACH CASE ENTERED INTO THE DECISION OF THE INDIVIDUAL MEMBERS OF THE PLANT COMMITTEE, AND INDEED SOME MEMBERS OF THE COMMITTEE DID NOT KNOW THE GRIEVORS PERSONALLY.

29. THE PLANT COMMITTEE CONCLUDED ITS BUSINESS WITH RESPECT TO LONGMOORE, GEBBIE AND KNIGHTON, BY INFORMING KNIGHTON THAT HE HAD RECEIVED A SUSPENSION AND INFORMED LONGMOORE THAT THEY WOULD NOT PROCEED TO ARBITRATION WITH HIS GRIEVANCE. LONGMOORE WAS THEN VERBALLY INFORMED OF HIS RIGHT TO APPEAL FROM THE PLANT COMMITTEE'S DECISION PURSUANT TO THE UAW'S CONSTITUTION.

30. IT ALSO APPEARS THAT GEBBIE WAS INFORMED THE NEXT DAY ABOUT THE DECISION. HE, AT LEAST, HAD SOME NOTICE OF IT FROM HIS ROOMMATE, A FORMER FORD EMPLOYEE, BUT HE ALSO HAD A DISCUSSION WITH A UNION OFFICIAL. IN ANY EVENT, EARLY IN THE NEXT WEEK, BOTH GEBBIE AND LONGMOORE BECAME INVOLVED IN A PETITION PROTESTING THE CONDUCT OF THE UNION

AND WERE SUCCESSFUL IN OBTAINING A CONSIDERABLE NUMBER OF SIGNATURES ON THAT PETITION. THE INFERENCE IS READILY DRAWN THAT GEBBIE WAS FULLY INFORMED ABOUT THE DECISION AND CHOSE TO SEEK FURTHER RELIEF BY THE TAKING UP OF THE PETITION. THE FLAW IN THE PETITION ACCORDING TO THE UNION WAS THAT IT REQUIRED A MEETING OF ALL UNION MEMBERS DURING WORKING HOURS, AND THE EFFECT OF SUCH A MEETING WOULD HAVE BEEN TO TAKE THE EMPLOYEES OUT OF THE PLANT WHICH WOULD HAVE BEEN AN UNLAWFUL STRIKE. ACCORDING TO THE UNION IT CHOSE NOT TO HONOUR THE PETITION IN THOSE CIRCUMSTANCES.

31. ON JULY 23, 1971, THE COMPLAINANTS MADE AN APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD WITH RESPECT TO THE AFORESAID MATTERS, BUT DID NOT CONTINUE WITH THAT APPLICATION.

32. ON SEPTEMBER 15, 1971, A NEW APPLICATION TO THIS BOARD WAS MADE, AND ON NOVEMBER 19, 1971, A HEARING WAS HELD IN WHICH A DECISION WAS RESERVED ON THE PROCEDURAL ISSUE AS TO WHO SHOULD BE PARTIES TO THE COMPLAINT.

33. ON JANUARY 14, 1972, THE COMPLAINANTS REQUESTED THAT THE APPLICATION BE WITHDRAWN TO ENABLE THEM TO FILE A NEW APPLICATION. THE INSTANT COMPLAINT WAS THE FILED ON JANUARY 17, 1972.

34. BEFORE EXAMINING THE ACTIVITIES OF THE COMPLAINANTS AND THE MERITS OF THE ISSUE IN GREATER DETAIL, WE THINK IT APPROPRIATE TO DISCUSS SOME OF THE PRINCIPLES AND CONSIDERATIONS THAT ARE RELEVANT IN ARRIVING AT A DECISION IN CASES WHERE THERE IS AN ALLEGATION THAT A BREACH OF SECTION 60 HAS OCCURRED.

35. THE LABOUR RELATIONS ACT HAS VESTED CONSIDERABLE POWER IN THE BARGAINING AGENTS. BY SECTION 35(1) EVERY COLLECTIVE AGREEMENT MUST PROVIDE THAT A "TRADE UNION...IS RECOGNIZED AS THE EXCLUSIVE BARGAINING AGENT IN THE BARGAINING UNIT DEFINED..." IN THE COLLECTIVE AGREEMENT. THE TRADE UNION'S EXCLUSIVE RIGHT IS OBTAINED UNDER VARIOUS PROVISIONS IN THE LABOUR RELATIONS ACT AND IT ARISES BECAUSE OF A DESIRE BY A MAJORITY OF THE MEMBERS IN THE BARGAINING UNIT FOR TRADE UNION REPRESENTATION; SEE E.G., SECTIONS 7, 15(3) AND 52(1). THE RIGHT TO REPRESENT EMPLOYEES DURING THE LIFE OF THE COLLECTIVE AGREEMENT ALSO GIVES THE UNION THE EXCLUSIVE AUTHORITY TO ADMINISTER THE COLLECTIVE AGREEMENT. THE UNION ALSO HAS EXCLUSIVE AUTHORITY IN NEGOTIATING A COLLECTIVE AGREEMENT; FOR EXAMPLE - AN EMPLOYER MAY NOT ALTER WAGES OR WORKING CONDITIONS WITHOUT THE APPROVAL OF THE UNION PRIOR TO THE EXHAUSTION OF THE STATUTORY CONCILIATION PROCESS; SEE E.G., SECTIONS 71 AND 59(1).

36. THE UNION'S EXCLUSIVITY IS SUMMED UP BY THE SUPREME COURT OF CANADA IN LE SYNDICAT CATHOLIQUE DES EMPLOYEES DE MAGASINS DE QUEBEC INC. V. LA CAMPAGNE PAQUET LTEE (1959) 18 D.L.R. (2d) 346, BY JUDSON J., AS FOLLOWS:

"THE UNION IS, BY VIRTUE OF ITS INCORPORATION UNDER THE PROFESSIONAL SYNDICATES' ACT AND

ITS CERTIFICATION UNDER THE LABOUR RELATIONS ACT, THE REPRESENTATIVE OF ALL EMPLOYEES IN THE UNIT FOR THE PURPOSE OF NEGOTIATING THE LABOUR AGREEMENT. THERE IS NO ROOM LEFT FOR PRIVATE NEGOTIATION BETWEEN EMPLOYER AND EMPLOYEE. CERTAINLY TO THE EXTENT OF THE MATTERS COVERED BY THE COLLECTIVE AGREEMENT, FREEDOM OF CONTRACT BETWEEN MASTER AND INDIVIDUAL SERVANT IS ABROGATED. THE COLLECTIVE AGREEMENT TELLS THE EMPLOYER ON WHAT TERMS HE MUST IN THE FUTURE CONDUCT HIS MASTER AND SERVANT RELATIONS. WHEN THIS COLLECTIVE AGREEMENT WAS MADE, IT THEN BECAME THE DUTY OF THE EMPLOYER TO MODIFY HIS CONTRACTS OF EMPLOYMENT IN ACCORDANCE WITH ITS TERMS SO FAR AS THE INCLUSION OF THOSE TERMS IS AUTHORIZED BY THE GOVERNING STATUTES. THE TERMS OF EMPLOYMENT ARE DEFINED FOR ALL EMPLOYEES, AND WHETHER OR NOT THEY ARE MEMBERS OF THE UNION, THEY ARE IDENTICAL FOR ALL... IT WAS NOT WITHIN THE POWER OF THE EMPLOYEE TO INSIST ON RETAINING HIS EMPLOYMENT ON HIS OWN TERMS, OR ON ANY TERMS OTHER THAN THOSE LAWFULLY INSERTED IN THE COLLECTIVE AGREEMENT..."

WHILE THAT CASE WAS CONCERNED WITH THE STATUTES OF A DIFFERENT PROVINCE THE CONCLUSIONS OF JUDSON J. ARE APPLICABLE TO THE LEGISLATION OF THIS PROVINCE. THUS, THE INDIVIDUAL INTERESTS ARE SUBORDINATED TO THE COLLECTIVE INTERESTS OF THE MEMBERS OF THE BARGAINING UNIT.

37. IN PRACTICAL TERMS THE RELATIONSHIP BETWEEN MEMBERS OF THE BARGAINING UNIT AND THE TRADE UNION IS ONE OF MAJORITY CONTROL. THE RELATIONSHIP IS NOT STRICTLY ONE OF CONTRACT BETWEEN EMPLOYEE MEMBERS OF THE UNION AND THE UNION, BUT RATHER THE RELATIONSHIP IS SUCH THAT THE SYSTEM CREATED MORE CLOSELY RESEMBLES THE LEGISLATIVE PROCESS THAN A CONTRACTUAL RELATIONSHIP; SEE COX, RIGHTS UNDER A COLLECTIVE AGREEMENT, 69 HARV. L. REV. 601 (1956).

38. SECTION 60 OF THE LABOUR RELATIONS ACT IS TO ENSURE THAT INDIVIDUAL RIGHTS ARE NOT ABUSED BY THE MAJORITY OF THE BARGAINING UNIT; IT IS AN ATTEMPT TO ACHIEVE A BALANCE BETWEEN THE INDIVIDUAL INTERESTS AND THE MAJORITY INTEREST BY RECOGNIZING THAT THE EXCLUSIVE BARGAINING AGENT HAS A DUTY TO CONSIDER ALL THE SEPARATE INTERESTS IN THE PERFORMANCE OF ITS OBLIGATIONS. THE DUTY HAS BEEN DESCRIBED AS THE DUTY OF FAIR REPRESENTATION. THE EMPHASIS IS ON FAIRNESS - IT IS A DUTY TO ACT FAIRLY IN THE INTERESTS OF ALL MEMBERS OF THE BARGAINING UNIT, MINORITY FACTIONS, AS WELL AS MAJORITY FACTIONS, INDIVIDUAL EMPLOYEES, AS WELL AS THE COLLECTIVE GROUP, MEMBERS AS WELL AS NON-MEMBERS, CRAFT

EMPLOYEES AS WELL AS INDUSTRIAL EMPLOYEES. IT IS NOT A DUTY WHICH MAKES THE UNION THE GUARANTOR OR INSURER FOR EVERY SITUATION IN WHICH AN INDIVIDUAL EMPLOYEE IS AGGRIEVED OR ADVERSELY AFFECTED; RATHER, THE STATUTE ATTEMPTS TO HAVE THE UNION CONSIDER THE POSITION OF ALL GROUPS AND TO WEIGH THE COMPETING INTERESTS OF MINORITIES, INDIVIDUALS AND OTHER LIKE GROUPS IN ARRIVING AT ITS DECISION. THE DIFFICULTIES THAT ARISE ARE IN APPLYING THE CONCEPT OF FAIRNESS AND PARTICULARLY WHERE TO DRAW THE LINE BETWEEN MAJORITY AND MINORITY INTERESTS.

39. SECTION 60 DERIVES FROM A SERIES OF DECISIONS AND LAW REVIEW ARTICLES IN THE UNITED STATES WHICH CULMINATED IN THE CLASSIC DECISION OF VACA ET AL. V. SIPES (1967) 55 LC ¶11,731; 386 U.S. 171 (U.S. SUP. CT.). THE LAW REVIEW ARTICLES, PARTICULARLY THE ARTICLE OF PROFESSOR COX, WHICH WE HAVE PREVIOUSLY CITED AND THE DECISIONS ARE THEREFORE HELPFUL GUIDES IN INTERPRETING AND APPLYING SECTION 60.

40. IN DECIDING WHETHER A UNION HAS VIOLATED THE ACT THE STANDARDS TO BE APPLIED ARE IMPORTANT. WE RECOGNIZE THAT UNION AFFAIRS ARE CONDUCTED FOR THE MOST PART BY LAYMEN. IN SOME SITUATIONS THERE ARE EXPERIENCED FULL TIME OFFICIALS OF A TRADE UNION WHO CONDUCT THE UNION AFFAIRS; IN OTHER SITUATIONS, THE UNION AFFAIRS ARE CONDUCTED BY EMPLOYEES IN THEIR SPARE TIME, WHILE IN YET OTHER SITUATIONS EMPLOYEES MAY BE GIVEN A LIMITED AMOUNT OF PAID TIME BY THEIR EMPLOYERS TO ENGAGE IN TRADE UNION MATTERS. THIS BOARD DOES NOT DECIDE CASES ON THE BASIS OF WHETHER A MISTAKE MAY HAVE BEEN MADE OR WHETHER THERE WAS NEGLIGENCE, NOR IS THE STANDARD BASED ON WHAT THIS BOARD MIGHT HAVE DONE IN A PARTICULAR SITUATION AFTER HAVING THE LEISURE AND TIME TO REFLECT UPON THE MERITS. RATHER, THE STANDARD MUST CONSIDER THE PERSONS WHO ARE PERFORMING THE COLLECTIVE BARGAINING FUNCTIONS, THE NORMS OF THE INDUSTRIAL COMMUNITY AND THE MEASURES AND SOLUTIONS THAT HAVE GAINED ACCEPTANCE WITHIN THAT COMMUNITY; SEE FISHER V. PEMBERTON ET AL. 8 D.L.R. (3d) AT 521 AT P. 546.

41. ONE OF THE MOST DIFFICULT AREAS IN APPLYING THE DUTY IS IN THE SETTLEMENT OF GRIEVANCES. WE THINK IT CLEAR THAT THE UNION'S OBLIGATION TO ADMINISTER THE COLLECTIVE AGREEMENT GIVES IT THE RIGHT TO SETTLE GRIEVANCES. AN EMPLOYEE DOES NOT HAVE AN ABSOLUTE RIGHT TO HAVE HIS GRIEVANCE ARBITRATED. ONE SHOULD CONSIDER THAT THE NEGOTIATION OF THE COLLECTIVE AGREEMENT WAS A GROUP AFFAIR AND CERTAIN INTERESTS YIELDED TO OTHERS, AND THERE IS NO REASON WHY THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT, INCLUDING THE GRIEVANCE-ARBITRATION PROVISIONS SHOULD NOT BE BASED ON THE SAME CONSIDERATIONS. IN DETERMINING FAIRNESS WITHIN THE MEANING OF THE ACT ONE MUST CONSIDER THE MERITS OF THE CLAIM, THE EFFECT ON OTHERS IN THE BARGAINING UNIT, THE IMPLICATIONS OF SETTLEMENT OR ARBITRATION ON THE FUTURE AND WHETHER THERE IS ANY EVIDENCE OF BAD FAITH, DISCRIMINATION OR ARBITRARINESS IN THE COMPROMISES EFFECTED. MOTIVE MAY BE SIGNIFICANT IN ASSESSING PROHIBITED CONDUCT PARTICULARLY WHEN CONSIDERING THE ADMONITION AGAINST BAD FAITH.

42. THERE ARE A NUMBER OF PRACTICAL CONSIDERATIONS FOR PERMITTING

THE UNION TO SETTLE GRIEVANCES WHICH HAVE MERIT. THE REASONS FOR THAT ARE CATALOGUED IN THE VACA CASE, SUPRA, AT 55 LC P. 18,299. IN EFFECT, THAT CASE PROVIDED THAT THE PARTIES TO THE COLLECTIVE BARGAINING AGREEMENT CONTEMPLATED THAT EACH WILL ENDEAVOUR IN GOOD FAITH TO SETTLE GRIEVANCES SHORT OF ARBITRATION. THAT IS ALSO CONTEMPLATED IN THIS JURISDICTION BY THE RECOGNITION THAT COLLECTIVE AGREEMENTS MAY CONTAIN A GRIEVANCE PROCEDURE; SEE SECTION 37(2). BY SETTLING FRIVOLOUS AND UNMERITIOUS GRIEVANCES ISSUES CAN BE QUICKLY RESOLVED WITHOUT THE COST AND TIME INVOLVED IN FURTHER STEPS OF THE GRIEVANCE PROCESS OR AT ARBITRATION. FURTHER, SIMILAR COMPLAINTS WILL BE DEALT WITH CONSISTENTLY WITH THE FINAL RESULT THAT "THE SETTLEMENT PROCESS FURTHERS THE INTERESTS OF THE UNION AS THE STATUTORY AGENT AND AS CO-AUTHOR OF THE BARGAINING AGREEMENT IN REPRESENTING EMPLOYEES IN THE ENFORCEMENT OF THAT AGREEMENT". COX, RIGHTS UNDER A COLLECTIVE AGREEMENT, SUPRA.

43. THE EFFECT OF AN INDIVIDUAL EMPLOYEE BEING ABLE TO COMPEL ARBITRATION OF HIS GRIEVANCE REGARDLESS OF MERIT WOULD VASTLY ENCUMBER THE SETTLEMENT MACHINERY REQUIRED BY THE ACT AND HAMPER THE INTERESTS OF INDUSTRIAL PEACE; IT WOULD DESTROY THE EMPLOYER'S CONFIDENCE IN THE UNION'S AUTHORITY AND ALSO REQUIRED UNSYSTEMATIC INDIVIDUAL NEGOTIATIONS WHICH ARE NOT CONDUCTIVE TO THE COLLECTIVE BARGAINING RELATIONSHIP ENVISIONED BY THE ACT. IT IS NOT UNCOMMON, PRESENTLY, FOR UNIONS TO BE CRITICIZED FOR ENCUMBERING THE GRIEVANCE PROCESS AND ARBITRATION PROCEDURES MERELY FOR INTERNAL UNION POLITICAL REASONS.

44. THE BALANCE THUS STRUCK IN THE RESOLUTION OF GRIEVANCES IS TO REQUIRE THE UNION TO FAIRLY REPRESENT THE INDIVIDUAL EMPLOYEE BY NOT ACTING ARBITRARILY, DISCRIMINATORILY OR IN BAD FAITH, WHICH ALSO INCLUDES THE REQUIREMENT THAT INDIVIDUAL GRIEVANCES NOT BE DEALT WITH IN A PERFUNCTORY MANNER; SEE E.G., ALFRED COMPTON V. INTERNATIONAL WOODWORKERS OF AMERICA LOCAL 1-700 (1972) OLRB REPS. 916.

45. THE STATUTE GIVES THE UNION THE RIGHT TO ADMINISTER THE COLLECTIVE AGREEMENT AND HAS RECOGNIZED THAT THERE MAY BE A GRIEVANCE PROCEDURE FOR THE PURPOSE OF RESOLVING DISPUTES DURING THE LIFE OF THE COLLECTIVE AGREEMENT. ALSO, UNIONS HAVE TRADITIONALLY SETTLED GRIEVANCES AND IN THESE CIRCUMSTANCES IT IS NOT DESIRABLE TO FIND A UNION LIABLE FOR BREACH OF THE DUTY OF FAIR REPRESENTATION MERELY BECAUSE AT A LATER STAGE THIS BOARD CONSIDERS A GRIEVANCE TO BE MERITORIOUS. THE PRACTICAL EFFECT OF SUCH "SECOND GUESSING" WOULD RESULT IN A UNION REFUSING TO SETTLE CLAIMS OR RESULT IN DAMPENING THE UNION'S INCLINATION TO RESOLVE GRIEVANCES. THIS WOULD PROFOUNDLY HAMPER THE SCHEME OF THE ACT WHICH CONTEMPLATES THE GRIEVANCE PROCEDURE AS ONE OF THE TOOLS IN PROMOTING INDUSTRIAL PEACE.

46. THUS, THE STATUTE PROTECTS AN INDIVIDUAL'S INTERESTS IN HIS GRIEVANCE FROM BEING ABUSED BY REQUIRING THE UNIONS TO DEAL FAIRLY WITH THOSE GRIEVANCES - THAT IS - IN A MANNER THAT IS NOT CONTRARY TO SECTION 60.

47. WHERE APPLICATIONS ARE BROUGHT UNDER SECTION 79 ALLEGING A VIOLATION OF SECTION 60 THERE ARE A NUMBER OF AVAILABLE REMEDIES. ONE REMEDY, OF COURSE, IS TO AWARD COMPENSATION; WHILE ANOTHER REMEDY IS TO REQUIRE THE MATTER BE REMITTED TO ARBITRATION. THE REMEDY, OF COURSE, WILL DEPEND ON THE NATURE AND FACTS OF EACH PARTICULAR CASE. IT IS ALSO APPARENT THAT WHERE THERE IS AN ALLEGATION RESPECTING THE UNION'S REFUSAL TO DEAL WITH A GRIEVANCE THAT MANY OF THE FACTS AND ISSUES SURROUNDING THE GRIEVANCE MAY BE RESOLVED IN THE COURSE OF ARRIVING AT A DETERMINATION CONCERNING THE UNION'S DUTY. IN THOSE CASES IT MAY BE DESIRABLE THAT THIS BOARD DECIDE THE GRIEVANCE ISSUES AS WELL AS THE SECTION 60 CLAIM, BECAUSE THE REMISSION OF THAT TYPE OF SITUATION TO ARBITRATION WOULD ONLY RESULT IN A DUPLICATION OF EVIDENCE, TIME AND COST TO THE PARTIES.

48. AN OBVIOUS DIFFICULTY IN FASHIONING A REMEDY UNDER SECTION 79 ARISES BECAUSE OF THE CLAIM THAT A BREACH OF THE DUTY IS THE CONCERN OF THE TRADE UNION ONLY AND NOT THE EMPLOYER, AND HENCE IT IS SUGGESTED THAT AN EMPLOYER SHOULD NOT BE A PARTY TO A SECTION 60 COMPLAINT. THAT ARGUMENT WAS STRENUOUSLY ADVANCED BEFORE US BY COUNSEL FOR FORD AT THE OUTSET OF THE PROCEEDINGS. WE RESERVED DECISION ON THAT MOTION AND SAID AS FOLLOWS:

FORD HAS RAISED ANOTHER ISSUE AS TO WHETHER IT IS PROPERLY A PARTY TO THESE PROCEEDINGS. IN OUR VIEW WE DO NOT THINK THAT WE SHOULD FINALLY RULE ON THAT ISSUE AT THIS TIME. IN VIEW OF SECTION 79(4)(c) AND THE BROAD REMEDIAL POWERS GIVEN TO THIS BOARD INCLUDING THE VACATING OF THE PROVISIONS OF A COLLECTIVE AGREEMENT, WE PREFER TO HEAR THE EVIDENCE AND TO PERMIT THE EMPLOYER TO PARTICIPATE IN THE PROCEEDINGS BUT WITHOUT PREJUDICE TO ITS RIGHTS INCLUDING THE RIGHT TO RENEW ITS MOTION AT THE CONCLUSION OF THE EVIDENCE.

AT THE CONCLUSION OF THE EVIDENCE THE BOARD HEARD ARGUMENT FROM COUNSEL FOR THE COMPLAINANTS AND THEN WITHOUT CALLING ON THE RESPONDENTS FOR ARGUMENT DISMISSED THE COMPLAINT WITH REASONS TO FOLLOW. DURING THE COURSE OF THE PROCEEDINGS THE ISSUE AGAIN AROSE IN CONNECTION WITH CERTAIN OF THE EVIDENCE AND FORD CONTINUED TO STRENUOUSLY MAINTAIN ITS POSITION.

49. IN VIEW OF THE DISPOSITION OF THIS CASE IT IS NOT NECESSARY FOR US TO FINALLY DECIDE THE ISSUE. HOWEVER, BECAUSE OF THE PRELIMINARY ARGUMENT AND DISCUSSION THAT ENSUED DURING THE COURSE OF THE PROCEEDINGS, WE FEEL THAT SOME COMMENTS ARE NECESSARY. WE RECOGNIZE THAT SECTION 60 IMPOSES NO STATUTORY DUTY ON AN EMPLOYER, BUT, WE ALSO RECOGNIZE AS WE INDICATED IN OUR INTERIM DECISION THAT SECTION 79(4)(c) GIVES THIS BOARD BROAD REMEDIAL POWERS INCLUDING THE VACATING OF THE PROVISIONS OF A

COLLECTIVE AGREEMENT. IF THE BOARD IS TO UTILIZE THE REMEDY OF REMITTING MATTERS TO ARBITRATION IT WILL UNDOUBTEDLY BE FACED WITH THE CRITICISM THAT AN EMPLOYER WHOSE RIGHTS MAY BE AFFECTED IS NOT A PARTY TO THE PROCEEDINGS; THIS IS PARTICULARLY SO SHOULD THE BOARD REQUIRE TIME LIMITS IN A COLLECTIVE AGREEMENT TO YIELD WHICH MAY BE PERMISSIBLE UNDER SECTION 79(4)(c). IN ORDER TO AVOID A DENIAL OF NATURAL JUSTICE IN THESE CIRCUMSTANCES AN EMPLOYER SHOULD BE A PARTY TO THE PROCEEDINGS AND THE BOARD'S RULES OF PROCEDURE, I.E., RULES 28 AND 54, MAY BE USED TO GIVE AN EMPLOYER NOTICE AND THE OPPORTUNITY TO APPEAR IN THOSE PROCEEDINGS WHERE HIS RIGHTS MAY BE AFFECTED.

50. THE REAL ISSUE IS WHETHER THE ENFORCEMENT PROVISIONS OF THE ACT CONTAINED IN SECTION 79(4)(c) SHOULD BE MADE TO RUN AGAINST AN EMPLOYER IN THE ABSENCE OF ANY STATUTORY VIOLATION BY THAT EMPLOYER. WE RECOGNIZE THAT IN MANY SITUATIONS APPROPRIATE RELIEF CANNOT BE AFFORDED TO AN EMPLOYEE UNLESS THE RELIEF CAN RUN TO AN EMPLOYER. SECTION 79(4)(c) IF READ LITERALLY SUGGESTS THAT THERE MAY BE RELIEF AGAINST BOTH THE UNION AND THE EMPLOYER WHERE THERE IS A BREACH OF SECTION 60.

51. COUNSEL FOR FORD TOOK THE POSITION THAT THE REFERENCE TO SECTION 60 WAS INSERTED IN SECTION 79(4)(c) IN ORDER TO ENABLE THE BOARD TO GRANT A REMEDY AGAINST A UNION FOR BREACH OF SECTION 60, BUT IT DID NOT CONTEMPLATE THAT A REMEDY WOULD ALSO BE AWARDED AGAINST AN EMPLOYER. THAT IS THE ISSUE THAT REMAINS TO BE DECIDED. WE POINT OUT THAT IN VACA V. SIPES THE COURT HAD THE OPPORTUNITY TO DISCUSS THE RELATIONSHIP OF AN EMPLOYER TO THE SITUATION WHERE THE UNION HAD VIOLATED ITS STATUTORY DUTY. IN VACA V. SIPES THE COURT STATED AT P. 18,302:

"THOUGH THE UNION HAS VIOLATED A STATUTORY DUTY IN FAILING TO PRESS THE GRIEVANCE, IT IS THE EMPLOYER'S UNRELATED BREACH OF CONTRACT WHICH TRIGGERED THE CONTROVERSY AND WHICH CAUSED THIS PORTION OF THE EMPLOYEE'S DAMAGES. THE EMPLOYEE SHOULD HAVE NO DIFFICULTY RECOVERING THESE DAMAGES FROM THE EMPLOYER, WHO CANNOT, AS WE HAVE EXPLAINED, HIDE BEHIND THE UNION'S WRONGFUL FAILURE TO ACT; IN FACT, THE EMPLOYER MAY BE (AND PROBABLY SHOULD BE) JOINED AS A DEFENDANT IN THE FAIR REPRESENTATION SUIT,..."

(ITALICS ADDED)

THE CONCLUSION IN VACA V. SIPES WAS THAT THE REMEDY SHOULD RUN TO THE EMPLOYER NOTWITHSTANDING THAT IT WAS THE UNION THAT HAD VIOLATED ITS STATUTORY DUTY.

52. SINCE WE DID NOT CALL ON THE RESPONDENT EMPLOYER AND THE RESPONDENT UNION FOR FINAL ARGUMENT IN THIS CASE, WE DO NOT THINK IT

APPROPRIATE TO FINALLY DECIDE THE ISSUES RAISED. WE DO WISH, HOWEVER, TO RECORD THE RAISING OF THE ARGUMENT AND OUR CONCERN WITH RESPECT TO THE OPERATION OF SECTION 60 AND SECTION 79(4)(c), AND TO LEAVE THE MATTER IN ABEYANCE FOR ARGUMENT AND FINAL DECISION AT ANOTHER TIME.

53. WE NOW TURN TO CONSIDER THE FACTS IN THIS CASE IN THE LIGHT OF THE PROVISIONS WHICH WE HAVE DISCUSSED.

54. IN THIS CASE THE EVIDENCE IS ABUNDANTLY CLEAR THAT THE COMPLAINANTS PARTICIPATED IN AN UNLAWFUL STRIKE AND THAT THEY WERE PROMINENT IN IT. THE LEADER OF THOSE INVOLVED IN THE WORK STOPPAGE APPEARS TO HAVE BEEN ONE HARTLOFF AND IN HIS ACTIVITIES HE WAS AIDED AND ABETTED BY THE COMPLAINANTS TO SUCH A DEGREE THAT WE FIND THEY TOO ASSUMED A LEADERSHIP ROLE - ALBEIT NOT AS PROMINENT AS HARTLOFF. WE FIND EVIDENCE OF THE COMPLAINANTS BEING ACTIVE IN EVERY PHASE OF THE UNLAWFUL STRIKE. WHILE THE COMPLAINANTS DID NOT LEAD THE WALKOUT THEY JOINED IT ALTHOUGH BOTH WERE NOT WORKING IN THE AREA WHERE THE CONDITIONS WHICH ALLEGEDLY PROVOKED THE WALKOUT AROSE. ON THE THURSDAY OF THE WALKOUT THEY MADE SIGNS AND PICKETED AND WERE SUCCESSFUL IN TURNING BACK THE AFTERNOON SHIFT. IN ADDITION, THEY TOOK AN ACTIVE PART IN SEEING THAT THE PICKETING WOULD BE EFFECTIVE BY MAKING CERTAIN THAT THERE WERE PICKETS PRESENT AT ALL THE NECESSARY GATES.

55. THAT NIGHT BOTH ATTENDED A MEETING WHERE LONGMOORE SPOKE. WHILE HE MAY HAVE SPOKEN IN FAVOUR OF RETURNING TO WORK, HIS ACTIONS DID NOT CORRESPOND WITH HIS WORDS FOR THE NEXT DAY LONGMOORE, GEBBIE AND OTHERS PROMINENTLY PICKETED THE COMPANY'S PREMISES SO AS TO TURN AWAY THE FRIDAY SHIFT.

56. THEIR CONDUCT CAN USEFULLY BE COMPARED TO THE CONDUCT OF THE WITNESS, KNIGHTON, WHO TESTIFIED. KNIGHTON WORKED IN THE AREA WHERE THE PROTEST AROSE AND HE HELPED TO LEAD THE WALKOUT IN PROTEST AGAINST THE WORKING CONDITIONS. YET HE TESTIFIED THAT ON FRIDAY MORNING HE WAS READY TO RETURN TO WORK BECAUSE THE EMPLOYEES HAD MADE THEIR POINT. ON THE OTHER HAND, GEBBIE AND LONGMOORE, WHO WERE NOT IMMEDIATELY AFFECTED BY THE CONDITIONS WHICH ALLEGEDLY PROVOKED THE WALKOUT, APPEARED ON THE SCENE AT 7:30 A.M. ON THE FRIDAY MORNING READY TO TURN BACK THE FRIDAY SHIFT, AND WERE ACTIVE BOTH IN PICKETING AND ENSURING THAT THERE WERE SUFFICIENT PICKETS TO ACCOMPLISH THAT PURPOSE.

57. ON THE THURSDAY NIGHT AFTER THE MEETING AT THE UNION HALL, THERE WAS A SUBMEETING ATTENDED BY BOTH GEBBIE AND LONGMOORE. AT THAT MEETING IT WAS DECIDED THAT THE PICKETS WOULD CONTINUE THE NEXT DAY. THE EVIDENCE OF GEBBIE IS QUITE CLEAR THAT THE GROUP WANTED TO CONTINUE THE PICKET LINES AND STOP THE PLANT FROM OPERATING THE NEXT DAY. WHILE GEBBIE AND LONGMOORE DO NOT SPECIFICALLY ADMIT TO LEADERSHIP IT IS CLEAR THAT THEY WERE PART OF A SMALL GROUP THAT DECIDED TO CONTINUE THE PICKETING ON THE FRIDAY.

58. THUS, BY THURSDAY NIGHT GEBBIE AND LONGMOORE HAD BEGUN TO EMERGE

FROM THE LARGER GROUP OF STRIKERS TO A POSITION WHERE THEY WERE PART OF A SMALLER GROUP WHICH WAS MAKING DECISIONS ABOUT WHETHER THE UNLAWFUL WORK STOPPAGE WAS TO CONTINUE. THIS WAS IN ADDITION TO THEIR PICKETING ACTIVITIES.

59. THEIR PROMINENCE WAS REINFORCED THE NEXT DAY WHEN THEY APPEARED ON THE PICKET LINE, NOT JUST TO PICKET BUT ALSO TO CHECK TO SEE IF ALL THE GATES WERE MANNED. AFTER THE PICKETING THAT MORNING THERE WAS ANOTHER MEETING WITH A SMALL GROUP OF PEOPLE AT A LOCATION REFERRED TO AS THE ACTION CENTRE. AGAIN, GEBBIE AND LONGMOORE WERE PRESENT AND ACCORDING TO GEBBIE'S EVIDENCE WHEN CROSS-EXAMINED BY COUNSEL FOR THE COMPANY, BOTH HE AND LONGMOORE WERE NOMINATED TO A STRIKE COMMITTEE. THAT COMMITTEE WAS COMPOSED OF SIX PERSONS. AGAIN, IT IS A REASONABLE INFERENCE THAT THE SIX PEOPLE WERE SO NOMINATED BECAUSE OF THEIR ACTIVE PARTICIPATION AND SUPPORT FOR THE UNLAWFUL STRIKE.

60. ON THE SATURDAY, A GROUP REFERRED TO AS A STRIKE COMMITTEE BY GEBBIE, MET IN HARTLOFF'S BACKYARD. THAT MEETING WAS IN ANTICIPATION OF A FORMAL UNION MEETING WHICH WAS HELD AT THE WINDSOR ARENA ON THE SUNDAY. A SPEECH WAS APPARENTLY WRITTEN FOR AN EMPLOYEE WHO SUBSEQUENTLY DECLINED TO GIVE THE SPEECH. LONGMOORE AND GEBBIE WERE ALSO PRESENT AT THE SATURDAY MEETING AND EVENTUALLY ON THE SUNDAY LONGMOORE DELIVERED THE SPEECH THAT HAD BEEN WRITTEN. KNIGHTON WAS NOT PRESENT AT THAT MEETING.

61. THE ROLE OF THE COMPLAINANTS WAS MORE ADEQUATELY SUMMED UP BY GEBBIE IN HIS CROSS-EXAMINATION. HE WAS ASKED "CAN YOU THINK OF ANYONE MORE PROMINENT THAN YOU?" AND HE RESPONDED TO THIS BY ANSWERING "No". WE ALSO FIND FROM THE EVIDENCE THAT LONGMOORE WAS AS PROMINENT, IF NOT MORE SO, THAT GEBBIE.

62. WE DO NOT PROPOSE TO DETAIL EACH SPECIFIC INCIDENT, BUT WE DO FIND THAT GEBBIE AND LONGMOORE WERE PRESENT AND INVOLVED IN EACH AND EVERY SIGNIFICANT INCIDENT WHICH OCCURRED IN CONNECTION WITH THE UNLAWFUL STRIKE AND ITS PERPETUATION, AND WE FURTHER FIND THAT THEIR ACTIVITY AND PROMINENT PARTICIPATION ASSISTED IN PROLONGING THE STRIKE. APART FROM HARTLOFF THERE WAS NO OTHER EMPLOYEE WHO MANAGED TO HAVE A FINGER IN THE SEVERAL INCIDENTS SURROUNDING THE STRIKE.

63. DID THE UNION ACT ARBITRARILY IN ITS TREATMENT OF THE COMPLAINANTS? THE UNION IN ITS NEGOTIATIONS WITH THE COMPANY ATTEMPTED TO SECURE THE REVOCATION OF ALL THE DISCHARGES. WHAT OCCURRED BETWEEN THE UNION AND THE COMPANY CAN ONLY BE TERMED AS "HARD BARGAINING". THERE IS NOT A SCINTILLA OF EVIDENCE THAT WHAT OCCURRED BETWEEN THE UNION AND THE COMPANY WAS ANYTHING BUT HARD BARGAINING. THERE IS NO EVIDENCE OF COLLUSION BETWEEN THE UNION AND THE COMPANY; THERE IS NO EVIDENCE OF CONSPIRACY BETWEEN THE UNION AND THE COMPANY. THE UNION AND THE COMPANY DEALT WITH EACH OTHER AT ARMSLENGTH THROUGHOUT, EACH MAINTAINING THEIR RESPECTIVE POSITIONS, AND IN THE END THE UNION PROVED TO BE EXTREMELY SUCCESSFUL IN NEGOTIATING SUSPENSIONS RATHER THAN DISCHARGES ON BEHALF OF THE MAJORITY OF EMPLOYEES WHO HAD BEEN DISCHARGED.

64. WE HAVE DEALT WITH THIS ASPECT OF THE CASE AT SOME LENGTH BECAUSE OF THE SUGGESTION BY THE COMPLAINANT THAT SOMETHING UNTOWARD OCCURRED BETWEEN THE UNION AND MANAGEMENT IN THE NEGOTIATION OF THEIR GRIEVANCES. WE RECOGNIZE THAT THIS TYPE OF ALLEGATION MAY CREATE AN ATMOSPHERE OF SUSPICION THAT LINGERS WELL AFTER THE CASE HAS BEEN DECIDED. WE THEREFORE FEEL IT NECESSARY TO DISPELL ANY STIGMA THAT THE UNION AND THE COMPANY CONDUCTED THEIR NEGOTIATIONS IN AN IMPROPER MANNER. ACCORDINGLY, WE CONFIRM OUR DECISION GIVEN AT THE HEARING THAT WITH RESPECT TO THE SUGGESTION OF COLLUSION IT IS OUR INTENT TO GIVE THE UNION AND THE COMPANY A CLEAN BILL OF HEALTH. THERE WAS NO ARBITRARINESS IN THIS ASPECT OF THE COMPLAINANTS CASE.

65. THE DECISION-MAKING PROCESS IN THIS CASE WAS IN ACCORDANCE WITH THE PAST PRACTICE FOLLOWED BY THE UNION AND THE COMPANY. A FULL DISCUSSION ON THE MERITS OF THE CASE COUPLED WITH THE DEMOCRATIC PROCEDURE IN TAKING A VOTE BELIES ANY SUGGESTION THAT THE UNION ACTED ARBITRARILY. THE DECISION OF THE PLANT COMMITTEE, IN EFFECT, WAS TO COME TO AN AGREEMENT TO ACCEPT THE FINAL PROPOSAL WHICH THE COMPANY PRESENTED DURING NEGOTIATIONS. IT WAS NOT A SIMPLE TRADE OFF OF KNIGHTON FOR GEBBIE AND LONGMOORE. WHILE THAT WAS THE COMPANY'S FINAL PROPOSAL, THE UNION DID NOT SIMPLY ACCEPT THAT PROPOSAL BUT REVIEWED THE MERITS OF EACH CASE. THE RESULT OF THE DECISION TAKEN BY THE UNION MAY HAVE BROUGHT THE UNION TO THE SAME FINAL POSITION AS THE COMPANY TO ENABLE IT TO ACCEPT THE PROPOSAL. BUT A DECISION WAS ONLY ARRIVED AT AFTER DUE CONSIDERATION BY THE UNION AS TO THE MERITORIOUSNESS OF EACH CASE. WE ARE SATISFIED FROM THE EVIDENCE OF WITNESSES CALLED BY THE COMPLAINANTS, AND THE UNION'S WITNESSES, THAT IF THERE HAD BEEN SOME MERIT IN THE GRIEVANCES OF LONGMOORE AND GEBBIE, THAT THE PROPOSAL PUT FORWARD BY THE COMPANY WOULD NOT HAVE BEEN ACCEPTED.

66. IT SHOULD ALSO BE NOTED AND NOT OVERLOOKED THAT THE END RESULT OF THE NEGOTIATIONS SAVED THE JOB OF KNIGHTON. WHILE KNIGHTON'S POSITION WAS SOMEWHAT DIFFERENT FROM GEBBIE'S AND LONGMOORE'S WE ARE ALSO SATISFIED THAT THERE WAS A DISTINCT POSSIBILITY, IF THE PLANT COMMITTEE HAD DECIDED TO PROCEED TO ARBITRATION WITH GEBBIE AND LONGMOORE, THAT KNIGHTON'S JOB MIGHT ALSO BE LOST. THE NET RESULT OF THE FINAL NEGOTIATIONS WAS ALSO TO SAVE THE JOB OF KNIGHTON, AND IT IS NOT NECESSARY TO REACH A DECISION AS TO WHETHER A SIMPLE TRADE OFF OF KNIGHTON FOR GEBBIE AND LONGMOORE CONSTITUTES A VIOLATION OF THE ACT BECAUSE THAT IS NOT THE SITUATION IN THIS CASE. THE ISSUES BETWEEN THE COMPANY AND THE UNION WERE CONSCIENTIOUSLY NEGOTIATED AND CONSCIENTIOUSLY DECIDED WITH THE DECISION OF THE UNION ARRIVED AT ONLY AFTER A CAREFUL REVIEW OF THE TOTAL SITUATION. THERE WAS NOTHING THAT WAS ARBITRARY ABOUT THE UNION'S DECISION NOT TO PROCEED TO ARBITRATION.

67. IN TURNING NEXT TO THE ISSUE OF DISCRIMINATION WE ARE MINDFUL THAT THE TERM DISCRIMINATION WAS AGAIN DERIVED FROM THE AMERICAN JURISPRUDENCE, AND THAT IT HAD ITS ORIGIN IN A SERIES OF CASES WHERE MEMBERS OF MINORITY GROUPS WERE DISCRIMINATED AGAINST BY THE UNION; SEE E.G., STEELE V. LOUISVILLE AND N.R.R. (9 LC ¶151,188, 323 U.S. 192). THE TERM

DISCRIMINATION IN THE CONTEXT OF SECTION 60 IS THEREFORE ASSOCIATED WITH RACIAL DISCRIMINATION, BUT WE DO NOT PROPOSE TO LIMIT THAT TERM IN INTERPRETING SECTION 60, BUT WE ARE PREPARED TO GIVE IT A BROADER INTERPRETATION WHICH WILL PREVENT A UNION FROM DISTINGUISHING AMONG MEMBERS IN THE BARGAINING UNIT UNLESS THERE ARE COGENT REASONS FOR SO DOING.

68. IF THERE WAS ANY TREATMENT AFFORDED TO GEBBIE AND LONGMOORE ON A DIFFERENT BASIS FROM OTHERS IT APPEARS TO BE JUSTIFIED. GEBBIE AND LONGMOORE WERE UNDOUBTEDLY LEADERS IN THE STRIKE ACTIVITY. WHEN COMPARED TO OTHERS IT APPEARS THAT A PROPER DISTINCTION MAY BE MADE BETWEEN THE ACTIVITIES OF THE COMPLAINANTS AND OTHERS. FOR EXAMPLE, KNIGHTON WHO WAS INVOLVED IN THE WORK STOPPAGE ON THURSDAY DID NOT PICKET THE PLANT ON THE FRIDAY AND ACCORDINGLY WAS NOT RESPONSIBLE FOR THE PLANT SHUTDOWN ON THAT DAY. THUS, IT IS PROPER TO DISTINGUISH HIS ACTIVITY FROM THE ACTIVITIES OF THE COMPLAINANTS.

69. THE COMPLAINANTS HAVE FAILED TO ADDUCE SUFFICIENT EVIDENCE TO ENABLE US TO MAKE A FINDING THAT THEY WERE SO SEPARATELY TREATED THAT THE UNION'S CONDUCT AMOUNTED TO DISCRIMINATION. THERE IS SOME SLIGHT EVIDENCE THAT ONE OF THE EMPLOYEES WHOSE DISCHARGE WAS AMENDED HAD CONSIDERABLE MORE SENIORITY THAN THE TWO COMPLAINANTS, AND ON THOSE GROUNDS THERE MAY BE SOME BASIS FOR SEPARATE OR DIFFERENT TREATMENT BY THE UNION WITH RESPECT TO THAT SENIOR EMPLOYEE.

70. BUT, IN A MORE POSITIVE SENSE, APART FROM HARTLOFF WHO APPEARS TO HAVE RESIGNED, THERE IS NO OTHER EMPLOYEE WHO MANAGED TO HAVE A FINGER IN THE SEVERAL INCIDENTS SURROUNDING THE STRIKE, AS DID GEBBIE AND LONGMOORE, AND IF THEY ARE SINGLED OUT AND ISOLATED FROM THE OTHER EMPLOYEES INVOLVED IN THE WORK STOPPAGE, THEN SUCH ISOLATION APPEARS TO BE WARRANTED SO THAT THE UNION'S TREATMENT OF THEIR GRIEVANCES IS NOT DISCRIMINATION WITHIN THE MEANING OF SECTION 60, NOR DOES IT APPEAR TO BE DISCRIMINATION BY THE COMPANY WITHIN THE MEANING OF LONG SAULT YARNS (1968) 19 L.A.C. 257 (CURTIS), WHICH WAS SUBSEQUENTLY UPHELD IN THE HIGH COURT OF ONTARIO BY LEIFF J. AND THE ONTARIO COURT OF APPEAL WITHOUT A REPORTED DECISION.

71. THERE IS NO EVIDENCE THAT THE UNION'S CONSIDERATIONS AS TO THE CONDUCT OF GEBBIE AND LONGMOORE WAS BASED ON BAD FAITH. THE UNION REPRESENTED THEM AT THEIR INTERVIEWS; A UNION REPRESENTATIVE TALKED GEBBIE OUT OF RESIGNING AND IN THE EVIDENCE ADDUCED BY BOTH THE COMPLAINANTS AND THE UNION, THERE DOES NOT APPEAR TO BE ANY EVIDENCE WHICH SUGGEST THAT THERE WAS ANY HOSTILITY TO GEBBIE AND LONGMOORE BY MEMBERS OF THE NEGOTIATING COMMITTEE OR PLANT COMMITTEE TO SUGGEST THAT THE DECISION WITH RESPECT TO THEIR GRIEVANCES WAS MADE IN BAD FAITH. NOTHING UNTOWARD APPEARS TO HAVE INFLUENCED EITHER THE DISCUSSION OR THE VOTE. INDEED, SOME MEMBERS OF THE COMMITTEE DID NOT KNOW THE GRIEVORS, AND THE EVIDENCE OF THE COMPLAINANTS AND THE UNION INDICATES THAT THERE WAS AN OPEN AND FRANK DISCUSSION ON THE MERITS OF THE GRIEVANCES BY THE PLANT COMMITTEE WHEN IT ARRIVED AT ITS DECISION, AND THAT THERE WAS NO ULTERIOR MOTIVE IN THE UNION'S COMING TO ITS FINAL DECISION.

72. WE WISH TO COMMENT ON TWO OTHER INCIDENTS. THE FIRST IS THAT GEBBIE WAS NOT PRESENT WHEN THE UNION ARRIVED AT ITS DECISION, AND THE SECOND BEING THE UNION'S REFUSAL TO HOLD A MEETING ALTHOUGH THERE WAS A PETITION FOR THAT PURPOSE WHICH WAS SIGNED BY A NUMBER OF UNION MEMBERS.

73. GEBBIE WAS CERTAINLY NOT PREJUDICED BY NOT BEING AT THE MEETING WHEN THE UNION REACHED ITS DECISION, BECAUSE THE NEXT DAY HE WAS INFORMED ABOUT THE UNION'S DECISION. HE DID NOT GO TO THE UNION OR THE COMPANY TO DISCUSS THE MATTER, BUT RATHER, HE CHOSE TO TAKE UP A PETITION TO HOLD A MEMBERSHIP MEETING. THERE APPEARS TO HAVE BEEN SUFFICIENT TIME FOR GEBBIE TO ACT, AND HIS NON-ATTENDANCE AT THE PLANT MEETING DOES NOT MEAN THAT THE UNION ACTED IN A MANNER THAT IS CONTRARY TO SECTION 60. WE NOTE THAT THE UNION DID MAKE EFFORTS TO CONTACT GEBBIE SO THAT HE COULD ATTEND THE MEETING.

74. THE COURSE OF CONDUCT THAT WAS NEXT ADOPTED BY GEBBIE AND LONGMOORE, WHICH WAS TO HOLD A MEETING OF UNION MEMBERS DURING WORKING HOURS, WOULD NATURALLY RESULT IN CONDUCT BY THE EMPLOYEES THAT IS PROHIBITED BY BOTH THE COLLECTIVE AGREEMENT AND THE LABOUR RELATIONS ACT. IN SHORT, TO HAVE CARRIED OUT THE WISHES OF THE PETITION WOULD HAVE RESULTED IN AN UNLAWFUL STRIKE MAKING THE UNION LIABLE TO PROSECUTION UNDER THE LABOUR RELATIONS ACT, AND FOR DAMAGES AS WELL. WE ARE NOT PREPARED TO FIND THAT THE REFUSAL BY THE UNION TO HOLD A MEETING AS REQUIRED BY THE PETITION WAS CONDUCT WHICH WAS IN VIOLATION OF SECTION 60 OF THE LABOUR RELATIONS ACT.

75. IN CONCLUSION, WE ARE UNABLE TO FIND ANY CONDUCT ON THE PART OF THE UNION WHICH CONSTITUTES A VIOLATION OF ITS DUTY TO ACT "IN A MANNER THAT IS NOT ARBITRARY, DISCRIMINATORY, OR IN BAD FAITH IN THE REPRESENTATION" OF THE COMPLAINANTS. IN OUR VIEW, SUCH A FINDING IS ALL THAT IS NECESSARY TO DISPOSE OF THIS COMPLAINT UNDER SECTION 60 EVEN IF IT APPEARS THAT THE GRIEVANCE IS MERITORIOUS. IN SECTION 60 CASES IT IS NOT NECESSARY TO GO BEYOND THIS POINT AND EXAMINE THE MERITS OF ANY PARTICULAR GRIEVANCE WHERE IT IS DETERMINED THAT THERE IS NO VIOLATION OF SECTION 60.

76. HOWEVER, IN VIEW OF THE ARGUMENT AND THE TIME THAT WAS TAKEN BY THE COMPLAINANTS IN ATTEMPTING TO EXAMINE THE MERITS OF THE PARTICULAR GRIEVANCES, WE PROPOSE TO DISCUSS THOSE MERITS. IT IS OUR VIEW THAT THE GRIEVANCE OF GEBBIE AND LONGMOORE LACKED MERIT WHICH IS AN ALTERNATIVE GROUND FOR DISMISSING THIS COMPLAINT.

77. IN ASSESSING THE CONDUCT OF GEBBIE AND LONGMOORE WE THINK THAT THE AWARD OF THE BOARD OF ARBITRATION IN AEROCIDE DISPENSERS LTD. (1965) 16 L.A.C. 57 (LASKIN) IS RELEVANT. IN THAT CASE THE BOARD STATED:

"IN THE CASE AT BAR, IT IS ESTABLISHED THAT THE GRIEVORS WERE ON AN UNLAWFUL STRIKE AND THAT SOME OF THEM PICKETED AS WELL IN FURTHERANCE THEREOF, SO THAT IF THIS WERE THE ORDINARY RUN OF CASE

IT WOULD ONLY REMAIN TO DECIDE AS A LEGAL QUESTION WHETHER SUCH CONDUCT IS JUST CAUSE FOR DISCHARGE. IF THIS WERE ALL THAT THERE WAS IN THE PRESENT CASE THE BOARD COULD SEE NO ANSWER (ESPECIALLY HAVING REGARD TO THE MANAGERIAL SENIORITY OF MOST OF THE GRIEVORS) TO THE COMPANY'S POSITION. AS AN ABSTRACT PROPOSITION IF PARTICIPATION IN AN UNLAWFUL STRIKE AND PICKETING IS NO CAUSE FOR DISCHARGE THERE CAN HARDLY BE ANY DISCRETION OF DUTY TO AN EMPLOYER IN RESPECT OF SERVICE THAT WOULD BE."

78. WE ARE OF THE OPINION THAT THIS STATEMENT FAIRLY SUMMARIZES THE GENERAL ATTITUDES OF BOARDS OF ARBITRATION IN ASSESSING THE TYPE OF CONDUCT EXHIBITED BY GEBBIE AND LONGMOORE IN THIS CASE. WE RECOGNIZE THAT THERE MAY BE EXCEPTIONS DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF THIS CASE. WE ARE NOT DISPOSED TO FIND AN EXCEPTION IN THE CIRCUMSTANCES OF THIS CASE. THE SENIORITY OF BOTH GEBBIE AND LONGMOORE IS NOT SUFFICIENT, IN OUR VIEW, TO CONSTITUTE A MITIGATING FACTOR IN FAVOUR OF GEBBIE AND LONGMOORE.

79. NOR DO WE THINK THAT THE EVIDENCE OF UNACCEPTABLE WORKING CONDITIONS RELIED ON BY GEBBIE AND LONGMOORE WERE FACTORS WHICH WERE SUFFICIENT TO REVERSE THE DISCHARGE OR NEGATE THE BASIS FOR THE UNION'S REFUSING TO PROCEED TO ARBITRATION. THE BEST POSITION OF THE COMPLAINANTS IN THIS REGARD IS THAT THE WORKING CONDITIONS MAY HAVE BEEN MITIGATING CIRCUMSTANCES FOR THE COMPANY TO CONSIDER WHEN DISCHARGING THE GRIEVORS, AND THAT FAILURE TO CONSIDER THOSE CIRCUMSTANCES MIGHT HAVE INFLUENCED A BOARD OF ARBITRATION. THAT IS A RELEVANT FACTOR WHEN WE CONSIDER THE MERITORIOUSNESS OF THEIR GRIEVANCES.

80. WE NOW TURN TO THE ISSUE OF WORKING CONDITIONS AND THEIR IMPACT ON GEBBIE AND LONGMOORE. INITIALLY WE POINTED OUT THAT GEBBIE AND LONGMOORE WERE NOT IN THE AREA WHERE THE PROTEST AROSE. LONGMOORE WORKED AT LEAST A "FOOTBALL FIELD" AWAY. THUS, THE IMMEDIATE CAUSES OF THE UNLAWFUL STRIKE WERE NOT MATTERS OF CONCERN TO EITHER GEBBIE OR LONGMOORE. GEBBIE TESTIFIED THAT HE WAS RETURNING TO WORK WHEN HE OBSERVED THAT PEOPLE HAD LEFT THE PLANT. HE THEN WAITED AROUND TO FIND OUT WHY THEY HAD LEFT AND AFTER A SHORT PERIOD DECIDED THEIR CAUSE WAS JUST AND JOINED THE WALKOUT.

81. LONGMOORE HAD BEEN EMPLOYED FOR APPROXIMATELY A YEAR. HE CLAIMS TO HAVE MADE COMPLAINTS ABOUT THE WORKING CONDITIONS. HIS TANGIBLE COMPLAINTS ARE AS FOLLOWS: FIRST, HE COMPLAINED ABOUT THE NOISE AND HE THINKS THERE WAS A GRIEVANCE. IN ANY EVENT HE RECEIVED EAR MUFFS WHICH APPARENTLY RESOLVED THE MATTER. SECOND, LONGMOORE CLAIMS THAT THERE WAS A GUARD MISSING FROM A MACHINE WHICH WAS A HAZARD. LONGMOORE FILED A GRIEVANCE AND THE MACHINE WAS FIXED. HE CLAIMS THAT THE GUARD WAS THEN TAKEN OFF AGAIN AND THAT THIS INCIDENT OCCURRED TWO OR THREE WEEKS

PRIOR TO THE WALKOUT, BUT THAT HE DID NOT BOTHER TO FOLLOW IT UP. HOWEVER, LONGMOORE IN HIS EXAMINATION-IN-CHIEF CLAIMED THAT HE WAS GETTING READY TO GO TO WORK WHEN HE SAW THE OTHERS WALKING DOWN THE AISLE. HE THOUGHT THE PLANT WAS WALKING OUT SO HE JOINED THE WALKOUT. APPARENTLY, THEN, THE WORKING CONDITIONS DID NOT PROVOKE LONGMOORE TO WALK OUT, BECAUSE HE WAS GETTING READY TO GO TO WORK. IT WAS ONLY WHEN THE OTHERS WENT OUT THAT HE JOINED THE WALKOUT. UNDER CROSS-EXAMINATION LONGMOORE ADMITTED THAT ON JUNE 17TH AT THE TIME OF THE WALKOUT HE HAD NOTHING TO COMPLAIN ABOUT, AND HE FURTHER STATED THAT HE WALKED OUT BECAUSE THE OTHER PEOPLE "WERE GOING TO PUT THINGS ON THE LINE TO PROTEST AND I THOUGHT I SHOULD BE WITH THEM. IF THEY WERE GOING TO PUT THEIR JOBS ON THE LINE I THOUGHT I SHOULD BE WITH THEM". IN ASSESSING LONGMOORE'S EVIDENCE ABOUT THE WORKING CONDITIONS WE ARE NOT VERY IMPRESSED WITH HIS EVIDENCE RESPECTING THE WORKING CONDITIONS AS THEY RELATED TO HIM. HE HAD TWO TANGIBLE COMPLAINTS, BOTH OF WHICH WERE REMEDIED AS A RESULT OF EITHER DISCUSSIONS OR FILING GRIEVANCES. IN ONE OF THOSE INSTANCES WHEN A GUARD WAS REMOVED FROM THE MACHINE AFTER THE MATTER WAS REMEDIED LONGMOORE DID NOT PURSUE IT. LONGMOORE'S EVIDENCE AS TO OTHER COMPLAINTS WERE SKETCHY AND WE ARE NOT PREPARED TO ACCEPT THAT THERE WERE OTHER COMPLAINTS RELATING TO LONGMOORE WHICH MIGHT HAVE PROVOKED HIM TO WALK OUT AND SHOULD MITIGATE THE PENALTY TO BE IMPOSED UPON HIM. AS TO THE TWO SPECIFIC COMPLAINTS, ONE WAS REMEDIED AND THE OTHER WAS NOT SERIOUS ENOUGH FOR LONGMOORE TO PURSUE IT. WE FIND THOSE TWO INCIDENTS WERE NOT PROVOCATIVE AND ARE NOT MITIGATING CIRCUMSTANCES IN LONGMOORE'S FAVOUR. IN SHORT, WE THINK LONGMOORE MERELY WALKED OFF THE JOB IN SYMPATHY WITH OTHER EMPLOYEES WHO MAY HAVE BEEN AFFECTED BY THE WORKING CONDITIONS, AND THAT WHEN HE DID SO IT WAS WITHOUT JUSTIFICATION ON HIS PART. HIS TESTIMONY, TAKEN AS A WHOLE, WITH RESPECT TO THE WORKING CONDITIONS AS THEY RELATED TO HIS POSITION IMPRESSED US AS A MERE AFTERTHOUGHT IN AN ATTEMPT TO JUSTIFY HIS POSITION IN JOINING THE WALKOUT AND IN ATTEMPTING TO HAVE THE UNION TAKE HIS CASE TO ARBITRATION.

82. THE EVIDENCE OF GEBBIE IN THIS REGARD IS NOT TOO DISSIMILAR TO LONGMOORE'S. HE CLAIMS HE HAD SOME COMPLAINTS BUT HE MADE NO EFFORT TO HAVE THEM REMEDIED THROUGH THE GRIEVANCE PROCEDURE. GEBBIE TESTIFIED HE SPOKE TO THE STEWARD ABOUT MATTERS BUT TO NO AVAIL. IN ANY EVENT GEBBIE DID NOT APPEAR TO US TO BE OVERLY INDUSTRIOUS IN PURSUING THE COMPLAINTS. HIS RECITAL OF THE COMPLAINTS ALSO APPEARS TO US AS AN AFTERTHOUGHT IN AN ATTEMPT BY HIM TO JUSTIFY THE REASON FOR HIS WALKING OUT. AGAIN, HE, LIKE LONGMOORE, WAS PREPARED TO WORK ON THE DAY OF THE WALKOUT. AT FIRST HE REMAINED OUTSIDE AND DID NOT RETURN TO WORK, NOT BECAUSE HE HAD BEEN PROVOKED BY HIS IMMEDIATE WORKING CONDITIONS, BUT MERELY TO FIND OUT WHY THE OTHERS WERE WALKING OUT. HE STAYED OUT BECAUSE HE FELT THE PERSONS WHO WALKED OUT AS HE STATED "WERE JUSTIFIED IN WHAT THEY DID; SO I DECIDED NOT TO GO BACK IN".

83. GEBBIE AND LONGMOORE APPEARED TO JOIN A CAUSE IN WHICH THEY WERE NOT DIRECTLY INVOLVED. MOREOVER, BY THEIR EFFORTS THEY PROLONGED A WALKOUT EVEN AFTER THE SITUATION THAT GAVE RISE TO THE WALKOUT HAD

BEEN REMEDIED, OR WAS ABOUT TO BE REMEDIED AS A RESULT OF EFFORTS BY THE UNION, AND AFTER THE PROTESTERS ACCORDING TO KNIGHTON HAD MADE THEIR POINT.

84. IN CONCLUSION WE ARE NOT PREPARED TO ACCEPT THE EVIDENCE OF EITHER GEBBIE OR LONGMOORE AS TO THE WORKING CONDITIONS AT THE PLANT AND PARTICULARLY AS TO THE MANNER IN WHICH THOSE WORKING CONDITIONS AFFECTED THEM.

85. WE FIND THAT THERE WAS NO PROVOCATION FOR THEM TO JOIN THE UNLAWFUL STRIKE, AND ALSO THERE WAS NO JUSTIFICATION FOR THEM TO PROLONG THE STRIKE AND THEREBY AGGRAVATE THE SITUATION. THEIR CLAIM IN THAT REGARD AFTER CONSIDERING THEIR TESTIMONY AND DEMEANOUR IN THE WITNESS BOX IS WITHOUT MERIT, AND WE DO NOT ACCEPT THEIR EVIDENCE ON THOSE ISSUES.

86. NOTHING IN THE SITUATION OR WORKING CONDITIONS RELATING TO GEBBIE AND LONGMOORE JUSTIFIED OR MITIGATED THEIR RESORT TO SELF HELP AND PERPETUATION OF THE STRIKE RATHER THAN A RESORT TO THE GRIEVANCE PROCEDURE. THE MACHINERY INTENDED BY THE COLLECTIVE BARGAINING PROCESS TO REMEDY MATTERS OF WORKING CONDITIONS, SUCH AS WERE HERE CLAIMED TO BE IMPROPER IS THE GRIEVANCE PROCEDURE AND NOTHING THAT THE COMPLAINANTS OR THEIR WITNESSES HAVE STATED WOULD LEAD US TO CONCLUDE THAT THE GRIEVANCE PROCEDURE WAS NOT THE BETTER WAY TO PROCEED.

87. IN SUM, WE THINK IN ALL THE CIRCUMSTANCES THAT THE GRIEVANCES OF THE COMPLAINANT WERE WITHOUT MERIT, AND IN ADDITION TO THE REASONS ALREADY GIVEN WE THINK THAT THIS IS ALSO REASON FOR US NOT TO GRANT THEM ANY RELIEF.

88. FOR ALL THESE REASONS THE COMPLAINT IS DISMISSED.

4519-73-U: VALENTINE DEVELOPMENTS AND FORTO FORMING LIMITED (APPLICANTS)
V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18, AND
CHARLES GUAGLIANO (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND F. J. O'KEEFFE.

APPEARANCES AT THE HEARING: W. G. PHELPS AND J. VALENTINI FOR THE APPLICANT VALENTINE DEVELOPMENTS; JAMES B. NOONAN FOR THE APPLICANT FORTO FORMING; STANLEY SIMPSON AND C. GUAGLIANO FOR THE RESPONDENTS.

DECISION OF THE BOARD: OCTOBER 15, 1973.

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2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE DISCLOSES THAT THE APPLICANT, VALENTINE DEVELOPMENTS, A GENERAL CONTRACTOR, EARLY IN AUGUST OF 1973, SUBCONTRACTED CERTAIN FORMING WORK TO THE APPLICANT, FORTO FORMING LIMITED, IN RELATION TO A BUILDING TO BE ERECTED ON A JOB SITE SITUATE AT GUELPH LINE AND HARVESTOR ROAD IN BURLINGTON. AS OF THE DATE OF THIS APPLICATION, NEITHER THE RESPONDENT TRADE UNION, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (HEREINAFTER REFERRED TO AS THE CARPENTERS' UNION) NOR LOCAL 183 OF THE INTERNATIONAL LABOURERS' UNION (HEREINAFTER REFERRED TO AS THE LABOURERS' UNION) HAD ACQUIRED BARGAINING RIGHTS COVERING THE WORK IN QUESTION, ALTHOUGH IT IS CLEAR ON THE EVIDENCE THAT SIXTY PER CENT OF THOSE EMPLOYED BY FORTO FORMING LIMITED IN THIS REGARD WERE MEMBERS OF THE LABOURERS' UNION. AS OF THE DATE OF THE FILING OF THIS APPLICATION ON OCTOBER 1, 1973, OTHER TRADE UNIONS REPRESENTING VARIOUS INDIVIDUALS EMPLOYED IN MECHANICAL AND ELECTRICAL SUB-TRADES, AS WELL AS TEAMSTERS' UNION REPRESENTING CEMENT TRUCK DRIVERS, HAVE ACQUIRED RESPECTIVE BARGAINING RIGHTS IN RELATION TO EMPLOYEES ENGAGED AT THE WORK SITE.

4. THE TESTIMONY OF JAMES VALENTINI, AN OFFICER OF VALENTINE DEVELOPMENTS, IS TO THE EFFECT THAT ON OR ABOUT AUGUST 24, 1973, HE HAD A DISCUSSION WITH CHARLES GUAGLIANO, THE BUSINESS MANAGER OF THE RESPONDENT, CARPENTERS' UNION, DURING WHICH TIME GUAGLIANO INDICATED THAT THE FORMING WORK BEING PERFORMED ON THE JOB SITE FELL WITHIN THE JURISDICTION OF THE CARPENTERS' UNION. WHEN VALENTINI REPLIED THAT HE WAS ASSURED BY FORTO FORMING LIMITED THAT THE WORK IN QUESTION FELL WITHIN THE JURISDICTION OF THE LABOURERS' UNION, GUAGLIANO ACCORDING TO THE WITNESS, (AND CORROBORATED BY HIS BROTHER RUDOLPH VALENTINI) STATED THAT IN ORDER TO STOP THE LABOURERS' UNION FROM PERFORMING THE WORK, "HE (GUAGLIANO) WOULD BLANKET THE AREA WITH PICKETS EVEN IF IT COSTS A MILLION DOLLARS".

5. IN AN EFFORT TO AVERT A PICKET LINE AT THE JOB SITE DURING THIS CRITICAL PERIOD OF CONSTRUCTION, VALENTINI STATED THAT HE THEN EXPLORED VARIOUS ALTERNATIVES SUCH AS HAVING HIS OWN COMPANY DO THE FORMING WORK WITH THE CARPENTERS' UNION SUPPLYING THE EMPLOYEES, AND ENTERTAINING TENDERS FOR THE WORK BY VARIOUS LOCAL CONTRACTORS WHO HAD COLLECTIVE AGREEMENTS WITH THE CARPENTERS' UNION. WHEN VALENTINI SUBSEQUENTLY ADVISED GUAGLIANO THAT THESE ALTERNATIVES PROVED TO BE UNWORKABLE, HE STATED THAT GUAGLIANO THEN INFORMED HIM THAT "HE WOULD GET THE SUPPORT OF THE HAMILTON DISTRICT TRADES COUNCIL". WHEN QUERIED AS TO WHAT HE THOUGHT GUAGLIANO MEANT BY "SUPPORT" IN THESE CIRCUMSTANCES, THE WITNESS REPLIED THAT HE ASSUMED IT WAS ACTIVE SUPPORT BY MEANS OF PICKETING.

6. VALENTINI FURTHER TESTIFIED THAT HE WAS GREATLY WORRIED ABOUT GUAGLIANO'S STATEMENTS CONCERNING THE SETTING UP OF A PICKET LINE AT THE WORK SITE AND HE SPECIFICALLY EXPRESSED CONCERN THAT EVEN AN HOUR'S DELAY CAUSED IN THE DELIVERY OF CEMENT DURING A POUR, WHICH FUNCTIONS WERE PERFORMED BY MEMBERS OF THE TEAMSTERS' UNION, COULD RESULT IN SERIOUS ECONOMIC CONSEQUENCES. ACCORDINGLY, IN A FURTHER EFFORT TO

CONVINCE GUAGLIANO OF THE MERITS OF HIS POSITION, VALENTINI FURTHER TESTIFIED THAT, HE THEN ARRANGED FOR A MEETING BETWEEN GUAGLIANO AND FRANK CORONA, THE GENERAL MANAGER OF FORTO FORMING LIMITED, ON SEPTEMBER 18, 1973. CORONA'S TESTIMONY IN THIS REGARD IS THAT GUAGLIANO INFORMED HIM AT THIS TIME THAT IF FORTO FORMING LIMITED DID NOT SIGN WITH THE CARPENTERS' UNION, HE WOULD PUT UP A PICKET LINE ON THE JOB. THIS MEETING DID NOT RESULT IN ANY FURTHER MUTUAL UNDERSTANDINGS AND MATTERS WERE LEFT UPON ON THE BASIS THAT CORONA WAS TO REVIEW WITH HIS LAWYER THE DRAFT COLLECTIVE AGREEMENT PRESENTED TO HIM BY GUAGLIANO AT THIS TIME. VALENTINI FURTHER TESTIFIED THAT FURTHER TALKS BETWEEN CORONA AND GUAGLIANO HAD SUBSEQUENTLY BROKEN DOWN AND ON OCTOBER 1, 1973, GUAGLIANO, WHO WAS VERY UPSET AT THE TIME, INFORMED HIM THAT HE HAD BEEN TOLD THAT FORTO FORMING LIMITED WOULD, DEFINITELY, NOT SIGN A COLLECTIVE AGREEMENT WITH THE CARPENTERS' UNION.

7. GUAGLIANO WAS NOT CALLED UPON TO GIVE TESTIMONY ON HIS OWN BEHALF IN DEFENCE AND ACCORDINGLY, THE STATEMENTS ATTRIBUTED TO HIM BY THE APPLICANTS' WITNESSES REMAIN UNCONTRADICTED. THE QUESTION, THEREFORE, TO BE DETERMINED BY THIS BOARD IS WHETHER SUCH STATEMENTS CONSTITUTE A THREAT OF UNLAWFUL STRIKE WITHIN THE MEANING OF SECTION 123 OF THE ACT. THIS QUESTION, IN TURN, MAY BE SUBDIVIDED INTO TWO PARTS. FIRSTLY, WAS THERE A REAL THREAT TO SET UP A PICKET LINE ON THE WORK SITE, AND IF SO, DOES SUCH A THREAT IN THE CIRCUMSTANCES, INVOLVE ONE OF UNLAWFUL STRIKE.

8. DEALING WITH THE FIRST ISSUE, COUNSEL FOR THE RESPONDENTS TAKES THE POSITION THAT THE THREAT EMANATING FROM GUAGLIANO, IN THESE CIRCUMSTANCES, WAS ESSENTIALLY AN EMPTY AND HOLLOW ONE IN THE CONTEXT IN WHICH IT WAS MADE AND LACKED THE NECESSARY MUSCLE FOR ENFORCEMENT. IN THIS REGARD, HE ARGUES, THE THREAT WAS ELICITED UPON AT LEAST THREE OCCASIONS WITH AN APPARENT DIMINISHING AND WEAKENING EFFECT AFTER EACH UTTERANCE, AND THAT IT NEVER WAS IN FACT EVER CARRIED OUT. IT WAS ALSO ARGUED THAT THIS WAS THE APPLICANTS' FIRST EXPERIENCE WITH GUAGLIANO, AND THAT THEREFORE THERE WAS NOT SUFFICIENT KNOWLEDGE ON THEIR PART TO ASSUME THAT GUAGLIANO WOULD HAVE THE PROPENSITY TO ACTUALLY CARRY OUT THE THREAT. WITH THESE POSITIONS, THIS BOARD MUST DISAGREE. HAVING CAREFULLY REVIEWED THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT GUAGLIANO'S REPRESENTATIONS CONCERNING THE SETTING UP OF PICKETS AND THAT HE HAD THE BACKING OF THE LOCAL BUILDING TRADES COUNCIL IN THIS REGARD, CONSTITUTED A REAL THREAT TO THE APPLICANTS THAT SUCH PICKETING ACTION COULD REASONABLY BE ANTICIPATED.

9. COUNSEL FOR THE RESPONDENT FURTHER ARGUES THAT EVEN IF THE BOARD IN THE CIRCUMSTANCES SHOULD FIND THAT GUAGLIANO'S ACTIONS IN THIS REGARD CONSTITUTED A REAL THREAT TO SET UP A PICKET LINE AT THE WORK SITE, THE BOARD, NEVERTHELESS, CANNOT MAKE THE "JUDICIAL LEAP" AND AUTOMATICALLY TREAT SUCH A THREAT AS ONE OF UNLAWFUL STRIKE.

10. THE UNCONTRADICTED EVIDENCE OF THE APPLICANTS' WITNESSES ESPECIALLY THAT OF JIM VALENTINI, A PERSON POSSESSING OVER TWENTY

YEARS OF EXPERIENCE IN DEALINGS WITH TRADE UNIONS IN THE CONSTRUCTION FIELD, IS THAT ONE COULD GENERALLY EXPECT THAT THE EMPLOYEES ENGAGED AT A WORK SITE COULD BE EXPECTED TO HONOUR SUCH A PICKET LINE AND IN HIS OWN WORDS "WHEN THE CONSTRUCTION MEN SEE PICKET LINES IN A PROJECT - THE JOB COMES TO A STOP". SUCH A VIEW WOULD APPEAR TO HAVE RECEIVED THE ACCEPTANCE OF THE SUPREME COURT OF ONTARIO IN SMITH BROTHERS CONSTRUCTION COMPANY LIMITED V. JONES ET AL, 55 CLLC ¶15,212 AND HERSEES OF WOODSTOCK LIMITED V. GOLDSTEIN ET AL, 63 CLLC ¶15,461, AND OF THE BOARD ITSELF IN THE DURCARD MECHANICAL CONTRACTORS LTD. CASE, OLRB M.R. (1971) FEBRUARY, P. 86. IN THE RESULT, WE ARE PREPARED IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE TO TREAT GUAGLIANO'S THREAT AS ONE OF UNLAWFUL STRIKE.

11. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS IN ALL OF THE CIRCUMSTANCES OF THIS CASE, THAT CHARLES GUAGLIANO DID THREATEN TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE. HAVING REGARD TO THE FACT THAT CHARLES GUAGLIANO IS AN OFFICIAL OF THE CARPENTERS' UNION AND TO THE PROVISIONS OF SECTION 88(2) OF THE LABOUR RELATIONS ACT, THE CARPENTERS' UNION IS ALSO DEEMED TO BE RESPONSIBLE FOR THE THREAT TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE.

12. THE BOARD FURTHER FINDS THAT THE PREREQUISITE CONDITIONS TO ITS EXERCISING ITS AUTHORITY UNDER SECTION 123 OF THE LABOUR RELATIONS ACT HAVE BEEN SATISFIED.

13. IN THE RESULT, THE BOARD DEEMS IT ADVISABLE AND HEREBY MAKES THE FOLLOWING DIRECTION:

THAT THE RESPONDENTS, THEIR RESPECTIVE AGENTS, OFFICERS, OFFICIALS, AND SERVANTS, AND ALL OTHER PERSONS ACTING WITH KNOWLEDGE OF THIS ORDER, CEASE AND DESIST FROM THREATENING TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE AT THE APPLICANTS' JOB SITE IN BURLINGTON.

THAT THE RESPONDENT CHARLES GUAGLIANO CEASE AND DESIST FROM THREATENING AN UNLAWFUL STRIKE.

4365-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA. (UAW) (APPLICANT) V. AIR MASTER OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: H. CARL ANDERSON AND HOWARD POWERS FOR THE APPLICANT; L. D. SMITH AND D. E. WATSON FOR THE RESPONDENT; WAYNE VAN VELZER AND KATHLEEN MARIE FULLER APPEARING ON BEHALF OF THE AIR MASTER EMPLOYEES ASSOCIATION.

DECISION OF THE BOARD:

OCTOBER 9, 1973.

1. THE RESPONDENT OPPOSED THIS APPLICATION ON THE GROUNDS THAT THE APPLICATION WAS UNTIMELY IN VIEW OF THE FACT THAT THE RESPONDENT WAS A PARTY TO AN AGREEMENT WITH AIR MASTER EMPLOYEES ASSOCIATION WHICH CONTINUES IN EFFECT UNTIL MARCH 31, 1974. THE CURRENT AGREEMENT WAS ONE OF A SERIES OF AGREEMENTS WITH THE AIR MASTER EMPLOYEES ASSOCIATION DATING BACK TO NOVEMBER 29, 1962. PRIOR TO NOVEMBER 29, 1962 THE UNITED STEELWORKERS OF AMERICA WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED; HOWEVER, WHEN THE UNITED STEELWORKERS OF AMERICA FAILED TO ENTER INTO A COLLECTIVE AGREEMENT, THE RESPONDENT APPLIED FOR TERMINATION OF BARGAINING RIGHTS AND FOLLOWING THE TAKING OF A REPRESENTATION VOTE THE BARGAINING RIGHTS OF THE UNITED STEELWORKERS OF AMERICA WAS TERMINATED. IMMEDIATELY PRIOR TO NOVEMBER 29, 1962 A NUMBER OF EMPLOYEES APPROACHED THE PRESIDENT OF THE RESPONDENT AND STATED THEY WOULD LIKE TO ORGANIZE AN ASSOCIATION FOR BARGAINING. THE PRESIDENT AGREED TO BARGAIN WITH AN EMPLOYEES' ASSOCIATION. THE PRESIDENT TOLD THE EMPLOYEES THAT THEY SHOULD FORM AN ASSOCIATION AND HAVE ONE MALE REPRESENTATIVE WHO WOULD REPRESENT THE MALE EMPLOYEES AND A FEMALE REPRESENTATIVE WHO WOULD REPRESENT THE FEMALE EMPLOYEES. SUBSEQUENTLY, THE RESPONDENT VOLUNTARILY RECOGNIZED THE AIR MASTER EMPLOYEES ASSOCIATION FOR THE PURPOSES OF BARGAINING AND ENTERED INTO AN AGREEMENT ON NOVEMBER 29, 1962. THE CURRENT AGREEMENT IS THE LATEST OF SIX AGREEMENTS THE RESPONDENT ENTERED INTO WITH AIR MASTER EMPLOYEES ASSOCIATION.

2. ALTHOUGH AIR MASTER EMPLOYEES ASSOCIATION DID NOT FORMALLY INTERVENE IN THIS APPLICATION, THE TWO EMPLOYEES WHO ACT AS THE MALE AND FEMALE REPRESENTATIVES OF THE ASSOCIATION APPEARED AND PARTICIPATED AT THE HEARING IN THIS MATTER.

3. THE APPLICANT CALLED AS ITS WITNESS WAYNE VAN VELZER, THE MALE EMPLOYEE REPRESENTATIVE OF THE AIR MASTER EMPLOYEES ASSOCIATION. MR. VAN VELZER WAS APPOINTED MALE REPRESENTATIVE ON OR ABOUT SEPTEMBER 12, 1973 AT THE TIME HIS PREDECESSOR LEFT THE EMPLOY OF THE RESPONDENT. MR. VAN VELZER TESTIFIED THAT ALTHOUGH HE IS KNOWN AS THE PRESIDENT OF THE ASSOCIATION HE DOES NOT BELIEVE THAT THERE IS SUCH A POSITION IN VIEW OF THE FACT THAT HE HAS BEEN UNABLE TO LOCATE ANY CONSTITUTION, BY-LAWS OR MINUTES OF MEETINGS OF THE ASSOCIATION EVEN THOUGH HE HAS MADE INQUIRIES OF ALL HIS PREDECESSORS IN OFFICE WHO ARE PRESENTLY EMPLOYED BY THE COMPANY. THE ONLY BOOKS THAT WERE TRANSFERRED TO MR. VAN VELZER WHEN HE TOOK OFFICE WAS A SAVINGS ACCOUNT PASS BOOK AND A CHEQUE FOR AN AMOUNT SOMETHING LESS THAN THE BALANCE SHOWN IN THE PASS BOOK.

4. DONALD E. WATSON, THE PRESIDENT OF THE RESPONDENT, TESTIFIED THAT APART FROM TELLING THE EMPLOYEES WHO APPROACHED HIM IN 1962 THAT THEY SHOULD HAVE ONE MALE AND ONE FEMALE REPRESENTATIVE, HE HAD NO FURTHER KNOWLEDGE OF HOW THE AIR MASTER EMPLOYEES ASSOCIATION WAS FORMED. HE WAS UNAWARE OF ANY MEETINGS APART FROM MEETINGS HELD ON THE COMPANY PREMISES TO RATIFY COLLECTIVE AGREEMENTS. HE HAD NO KNOWLEDGE OF ANY

CONSTITUTION, BY-LAWS, MINUTES OR OTHER DOCUMENTS WHICH WOULD EVIDENCE THE FORMAL EXISTENCE OF THE AIR MASTER EMPLOYEES ASSOCIATION. HOWEVER, MR. WATSON TESTIFIED THAT IN 1966 THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND A REPRESENTATION VOTE WAS DIRECTED AT THAT TIME. IN DIRECTING THE VOTE THE BOARD DIRECTED THAT THE BALLOT OFFER THE EMPLOYEES A CHOICE BETWEEN THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND AIR MASTER EMPLOYEES ASSOCIATION. THE DECISIONS OF THE BOARD DIRECTING THE VOTE AND SUBSEQUENTLY DISMISSING THAT APPLICATION FAILED TO INDICATE THAT ANYONE RAISED AN ISSUE IN THOSE PROCEEDINGS CONCERNING THE STATUS OF THE AIR MASTER EMPLOYEES ASSOCIATION. IT IS ACCORDINGLY FAIR TO SAY THAT THE BOARD ASSUMED THAT THE ASSOCIATION WAS A TRADE UNION SINCE IT PERMITTED THE ASSOCIATION TO APPEAR AS A CHOICE ON THE BALLOT. HOWEVER THAT MAY BE, THE BOARD IN THAT CASE DID NOT MAKE A FINDING THAT THE ASSOCIATION WAS A TRADE UNION WITHIN THE MEANING OF THE ACT.

5. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE AIR MASTER EMPLOYEES ASSOCIATION IS AN INFORMAL ASSOCIATION OF EMPLOYEES AS DISTINGUISHED FROM A FORMAL ORGANIZATION OF EMPLOYEES WHICH COULD BE RECOGNIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. APART FROM TWO REPRESENTATIVES, ONE MALE AND ONE FEMALE, WHO ARE APPOINTED BY THE EMPLOYEES TO SPEAK ON BEHALF OF THE EMPLOYEES WHEN DEALING WITH THE RESPONDENT, THERE IS NO CONSTITUTION, BY-LAWS, MINUTES OR OTHER DOCUMENTS WHICH WOULD EVIDENCE THE FACT THAT THERE WAS ANY SUBSTANCE TO THE AIR MASTER EMPLOYEES ASSOCIATION.

6. AS WAS STATED BY THE BOARD IN THE GULF OIL CANADA LIMITED CASE, OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1380,

BEFORE AN ORGANIZATION CAN OBTAIN RECOGNITION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW 1(1)(N)] OF THE LABOUR RELATIONS ACT, IT MUST BE ESTABLISHED THAT THE ORGANIZATION IS A VIABLE ENTITY WHICH HAS A CONSTITUTION, BY-LAWS, CHARTER OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH ITS EXISTENCE AS A VIABLE ENTITY AND WHICH PROSPECTIVE MEMBERS COULD INSPECT IN ORDER TO DETERMINE WHETHER OR NOT THE ORGANIZATION IS ONE WHICH SUCH PROSPECTIVE MEMBERS WOULD WISH TO JOIN.

7. WE THEREFORE FIND, FOR THE REASONS GIVEN IN THE ELGIN MOTORS COMPANY LIMITED CASE, (1973) OLRB REP. 256, THAT THE ASSOCIATION IS MERELY AN INFORMAL ASSOCIATION AND NOT THE TYPE OF FORMAL ORGANIZATION CONTEMPLATED IN THE DEFINITION OF A TRADE UNION WHICH APPEARS IN SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

8. WE THEREFORE FIND THAT THE ASSOCIATION IS NOT A TRADE UNION

WITHIN THE MEANING OF THE ACT AND THAT THE INSTANT APPLICATION IS ACCORDINGLY TIMELY.

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4066-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v. FIELD-PRICE LIMITED (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F.W. MURRAY.

APPEARANCES AT THE HEARING: EDWARD C. WITTHAMES FOR THE APPLICANT; K.O. FIELD AND A.D. PRICE FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 16, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT TRADE UNION AND THE RESPONDENT EMPLOYER BY THE OPERATION OF THAT SECTION ARE PARTIES TO A COLLECTIVE AGREEMENT.

2. THE EVIDENCE BEFORE THE BOARD IS THAT ON JUNE 5, 1973, THE EMPLOYEES OF HALLMAC LIMITED WERE TERMINATED AND INFORMED THAT FIELD-PRICE LIMITED WAS TAKING OVER THE OPERATION. THE NEXT DAY THE EMPLOYEES RETURNED TO WORK AND CONTINUED PERFORMING THE SAME JOB. IT APPEARS THAT HALLMAC LIMITED WAS EXPERIENCING SOME FINANCIAL DIFFICULTIES AND WAS UNDER THE MANAGEMENT OF A MR. BUEHLOW, WHO WAS ACTING FOR THE RECEIVER UNDER A DEBENTURE BY HALLMAC LIMITED IN FAVOUR OF THE BANK OF MONTREAL. THE EVIDENCE IS THAT FIELD-PRICE LIMITED PURCHASED CERTAIN ASSETS OF HALLMAC LIMITED FROM THE RECEIVER, D.A. BUEHLOW.

3. THE RESPONDENT TOOK THE POSITION THAT THE PURCHASE OF HALLMAC LIMITED INVOLVED ONLY CERTAIN OF THE EQUIPMENT AND INVENTORY OF HALLMAC LIMITED AND NOT THE SHARES OF THE PREDECESSOR COMPANY. IN THIS REGARD THE RESPONDENT TENDERED AS EVIDENCE A COPY OF A CONDITIONAL SALES AGREEMENT BETWEEN D.A. BUEHLOW AND FIELD-PRICE LIMITED, DATED JUNE 6, 1973. THAT AGREEMENT LISTS THE EQUIPMENT AND INVENTORY PURCHASED BY FIELD-PRICE LIMITED AND ALSO INDICATES THAT THE GOODWILL OF HALLMAC LIMITED WAS PURCHASED BY FIELD-PRICE LIMITED. IT SEEMS, HOWEVER, THAT THE RESPONDENT, FIELD-PRICE LIMITED, DID NOT PURCHASE THE RIGHT TO USE THE NAME OF HALLMAC LIMITED.

4. FROM THE EVIDENCE IT IS CLEAR THAT FIELD-PRICE LIMITED PURCHASED A BUSINESS FROM THE RECEIVER OF HALLMAC LIMITED. IT IS CLEAR THAT WHAT WAS PURCHASED WAS PURCHASED AS A GOING CONCERN AND ALTHOUGH THE COMPLETE BUSINESS OF HALLMAC LIMITED WAS NOT PURCHASED THE BOARD IS SATISFIED THAT THERE WAS A TRANSFER OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT.

5. THE APPLICANT TRADE UNION WAS PARTY TO A COLLECTIVE AGREEMENT WITH HALLMAC LIMITED WHICH EXPIRED DECEMBER 31, 1972. NOTICE TO BARGAIN FOR THE RENEWAL OF THAT AGREEMENT WAS GIVEN AND THE PARTIES MET AND BARGAINED UNDER THE AUSPICES OF A CONCILIATION OFFICER. AS A RESULT OF THE MEETINGS BETWEEN THE PARTIES A MEMORANDUM WAS DRAWN UP INDICATING THE BASIS OF SETTLEMENT. THE MEMORANDUM IS SIGNED BY THE UNION AND BY THE COMPANY. IT INDICATES IN DETAIL THE CHANGES MADE TO THE PREVIOUS COLLECTIVE AGREEMENT. THE TERM OF THE NEW AGREEMENT WAS FROM JANUARY 1, 1973 TO DECEMBER 31, 1974. THIS MEMORANDUM WAS SIGNED ON FEBRUARY 16, 1973 AND CONTAINS THE PROVISION THAT THE UNDERSIGNED REPRESENTATIVES OF THE PARTIES APPROVE OF THE ABOVE SETTLEMENT TERMS AND AGREE TO UNANIMOUSLY RECOMMEND ACCEPTANCE TO THEIR RESPECTIVE PRINCIPALS. IN FACT, THE UNION RATIFIED THE AGREEMENT OF FEBRUARY 18, 1973. THE REPRESENTATIVE OF THE UNION SUBSEQUENTLY MET WITH MR. BUEHLOW THE RECEIVER-MANAGER OF HALLMAC LIMITED AT THAT TIME. THE AGREEMENT WAS PUT INTO EFFECT BY THE EMPLOYER. HOWEVER, THE RECEIVER REFUSED TO EXECUTE A COPY OF THE AGREEMENT DRAFTED IN ACCORDANCE WITH THE MEMORANDUM OF SETTLEMENT. THE QUESTION THUS ARISES WHETHER THE MEMORANDUM OF SETTLEMENT BETWEEN HALLMAC LIMITED AND THE APPLICANT TRADE UNION CONSTITUTES A COLLECTIVE AGREEMENT, OR WHETHER IT IS CHARACTERIZED AS AN AGREEMENT TO MAKE AN AGREEMENT.

6. HAVING REGARD TO THE FACT THAT THE MEMORANDUM OF SETTLEMENT CONSTITUTES A COMPLETE COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION, THAT IS, IT LEAVES NOTHING TO BE AGREED UPON AND FURTHER HAVING REGARD TO THE FACT THAT THE ONLY THING WHICH REMAINED TO BE DONE WITH THE MEMORANDUM OF SETTLEMENT DATED FEBRUARY 16, 1973, WAS RATIFICATION BY THE PRINCIPLES TO THE PARTIES THERETO, WE ARE OF THE VIEW THAT THE FACT THAT THIS AGREEMENT WAS BROUGHT INTO EFFECT BETWEEN THE PARTIES CONSTITUTES EVIDENCE THAT THE AGREEMENT WAS RATIFIED. THE BOARD THEREFORE FINDS THAT THE APPLICANT TRADE UNION WAS A PARTY TO A COLLECTIVE AGREEMENT DATED FEBRUARY 16, 1973, WITH HALLMAC LIMITED.

7. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD HEREBY DECLARES THAT THE APPLICANT TRADE UNION AND THE RESPONDENT EMPLOYER ARE PARTIES TO A COLLECTIVE AGREEMENT DATED FEBRUARY 16, 1973.

3479-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) v. CANADA GLAZED PAPERS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

DECISION OF THE BOARD:

OCTOBER 19, 1973.

1. THE RESPONDENT BY LETTER DATED OCTOBER 2, 1973 HAS REQUESTED THE BOARD TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT IN THIS MATTER BY INCLUDING IN THE DESCRIPTION OF THE BARGAINING UNIT THE SPECIFIC EXCLUSIONS CONTAINED IN THE BOARD'S DECISION DATED SEPTEMBER 7, 1973, WHICH

EXCLUSIONS ARE SET OUT BY WAY OF CLARITY NOTES AND FINDINGS. THE APPLICANT OPPOSED THE RESPONDENT'S REQUEST ON THE GROUNDS THAT "...THE BOARD HAS ADEQUATELY COVERED THE DESCRIPTION OF THE BARGAINING UNIT IN ITS CERTIFICATE ISSUED ON SEPTEMBER 25TH, 1973."

2. THE BOARD'S CERTIFICATE DATED SEPTEMBER 25, 1973 SETS OUT THE DESCRIPTION OF THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE IN ITS DECISION DATED SEPTEMBER 7, 1973. THE CERTIFICATE THEN STATES "THIS CERTIFICATE IS TO BE READ SUBJECT TO THE TERMS OF THE BOARD'S DECISION(S) IN THIS MATTER AND, ACCORDINGLY, THE BARGAINING UNIT DESCRIBED HEREIN IS TO BE READ SUBJECT TO ANY QUALIFICATIONS REFERRED TO IN THE SAID DECISION(S) OF THE BOARD."

3. THE DECISION OF THE BOARD IN THIS MATTER CONTAINED ALL THE QUALIFICATIONS WHICH THE RESPONDENT WISHES THE BOARD TO RECORD IN ANOTHER FORM BY AMENDING THE BARGAINING UNIT DESCRIPTION.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, WE ARE OF THE VIEW THAT THE BOARD'S CERTIFICATE DATED SEPTEMBER 25, 1973, WHEN READ SUBJECT TO THE BOARD'S DECISIONS IN THIS MATTER, CORRECTLY AND FULLY RECORD ALL THE BOARD'S FINDINGS WITH RESPECT TO THE BARGAINING UNIT. WE ACCORDINGLY DO NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ANY OF OUR DECISIONS IN THIS MATTER AS REQUESTED BY THE RESPONDENT.

5. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

2427-72-R: ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 (INTERVENER #2) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (INTERVENER #3) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (INTERVENER #4) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 765 (INTERVENER #5) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (INTERVENER #6).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: OCTOBER 24, 1973.

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4. THE APPLICANT HAS REQUESTED ACCREDITATION FOR A UNIT CONSISTING OF ALL EMPLOYERS OF JOURNEYMEN MILLWRIGHTS AND APPRENTICES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE PROVINCE OF ONTARIO AND THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR. THE RESPONDENT IN ITS

REPLY HAS INDICATED THAT IT AGREES WITH THE APPLICANT'S POSITION AS TO THE APPROPRIATE UNIT OF EMPLOYERS FOR ACCREDITATION. AT THE HEARING IN THIS MATTER THE BOARD HEARD THE REPRESENTATIONS OF THE ASSOCIATION THAT WAS INTERVENER #1 TO THE APPLICATION, THE REPRESENTATIONS FROM THE 5 TRADE UNIONS THAT CONSTITUTE INTERVENER #2 THROUGH INTERVENER #6 AND FROM INDIVIDUAL EMPLOYERS AS TO THE APPROPRIATE UNIT OF EMPLOYERS FOR ACCREDITATION. CONCERNING INTERVENER #1 THIS INTERVENER STATED ITS CONCERN WAS SOLELY WITH THE ELECTRICAL POWER SYSTEMS SECTOR AND ON THE ASSURANCE THAT THE APPLICATION WAS ONLY WITH RESPECT TO THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY WITHDREW ITS REQUEST TO MAKE REPRESENTATIONS ON THE APPROPRIATE UNIT OF EMPLOYERS.

5. THE 5 LOCALS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS WHO APPEARED AS INTERVENERS, WERE CONCERNED ABOUT THE AFFECT OF THE ACCREDITATION DECISION ON THE JURISDICTIONAL CLAIMS OF THESE VARIOUS LOCALS. AS A RESULT OF THIS CONCERN THE APPLICANT, THE RESPONDENT AND THE VARIOUS INTERVENER LOCAL TRADE UNIONS AGREED THAT IF THE APPLICANT WAS TO BECOME ACCREDITED IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY FOR THE PROVINCE OF ONTARIO, SUCH AN ORDER WOULD NOT IN ANY WAY AFFECT THE RESPECTIVE JURISDICTIONAL CLAIMS OF THE RESPONDENT AND THE INTERVENERS.

6. THE BOARD ALSO HEARD THE REPRESENTATIONS OF 2 INDIVIDUAL EMPLOYERS, E-19 - CANADIAN MACHINERY MOVERS LTD. AND E-31 - B. J. CYR CO. LTD. THESE EMPLOYERS ARE BASED IN WINDSOR, ONTARIO, AND REQUESTED THAT THE BOARD EXCLUDE FROM ANY APPROPRIATE UNIT OF EMPLOYERS THE GEOGRAPHIC AREA OF THE COUNTIES OF ESSEX AND KENT. THE BASIS FOR THIS REQUEST WAS THE MILITANT ATTITUDE OF THE TRADE UNIONS IN THE WINDSOR AREA. IT WAS FELT THAT THIS ATTITUDE TOGETHER WITH THE EFFECT OF THE ACCREDITATION PROVISIONS OF THE LEGISLATION WOULD CAUSE SERIOUS HARM TO THESE EMPLOYERS IN THE EVENT THAT AN EMPLOYERS' ORGANIZATION WERE TO LOCK OUT THE RESPONDENT ON A PROVINCE WIDE BASIS. THESE TWO EMPLOYERS ALSO MADE CERTAIN REPRESENTATIONS CONCERNING THE BARGAINING RELATIONSHIP WITH THE RESPONDENT AND THIS MATTER WAS REFERRED TO AN EXAMINER AND WILL BE DEALT WITH LATER IN THIS DECISION. HOWEVER, WE ARE OF THE VIEW THAT WE CANNOT ACCEPT THE REASONS GIVEN AS JUSTIFICATION FOR EXCLUDING THE COUNTIES OF ESSEX AND KENT FROM THE PROVINCE-WIDE UNIT OF EMPLOYERS SOUGHT BY THE APPLICANT IN THE PRESENT CASE. FROM THE EVIDENCE BEFORE THE BOARD IT IS CLEAR THAT THE PROVINCE-WIDE BARGAINING RELATIONSHIP BETWEEN THE APPLICANT AND THE RESPONDENT HAS BEEN IN EFFECT FOR SOME FOURTEEN YEARS AND WE ARE OF THE VIEW THAT IT WOULD TAKE MUCH MORE SIGNIFICANT REASONS THAN THOSE PUT FORTH BY THE EMPLOYERS TO CHANGE SUCH A STABLE BARGAINING STRUCTURE. INDEED, WE CANNOT HELP BUT NOTE THAT THE POSSIBLE HARDSHIP REFERRED TO BY THESE EMPLOYERS IS WELL WITHIN THE LEGISLATIVE INTENT OF THE ACCREDITATION PROVISIONS OF THE ACT, AND IS NO DOUBT PART OF THE JUSTIFICATION FOR THE RIGOROUS REQUIREMENTS SET OUT IN SECTION 115 OF THE ACT.

7. IN LIGHT OF THE ABOVE CONSIDERATIONS THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYERS OF MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES ON WHOSE BEHALF THE RESPONDENT IS ENTITLED TO BARGAIN IN THE PROVINCE OF ONTARIO AND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY, CONSTITUTE A UNIT OF EMPLOYERS APPROPRIATE FOR COLLECTIVE BARGAINING.

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4465-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) v. MASON WINDOWS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 19, 1973.

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5. THE RESPONDENT IS ENGAGED IN THE MANUFACTURE OF WOODEN WINDOWS. THE RESPONDENT REQUESTED THE EXCLUSION OF PERSONS CLASSIFIED AS TRUCK DRIVERS AND CUSTOMER SERVICEMEN ON THE GROUNDS THAT SUCH PERSONS AT TIMES ARE REQUIRED TO PERFORM SOME SERVICES OUTSIDE THE BOUNDARIES OF THE PROVINCE OF ONTARIO. THE RESPONDENT TOOK THE POSITION THAT SUCH ACTIVITIES PLACE THE TRUCK DRIVERS AND THE CUSTOMER SERVICEMEN UNDER FEDERAL JURISDICTION.

6. THE BOARD FINDS NO MERIT IN THE RESPONDENT'S PROPOSED EXCLUSION OF TRUCK DRIVERS AND CUSTOMER SERVICEMEN. AS STATED ABOVE, THE RESPONDENT IS ENGAGED IN THE MANUFACTURE AND SALE OF WOODEN WINDOWS. EMPLOYEES WHO ARE REQUIRED TO DELIVER AND SERVICE SUCH WINDOWS OUTSIDE THE PROVINCE ARE AN INTEGRAL PART OF THE RESPONDENT'S MANUFACTURING OPERATIONS AND ARE IN NO WAY PERFORMING FUNCTIONS WHICH FALL WITHIN FEDERAL JURISDICTION. THE BOARD ACCORDINGLY ASSERTS JURISDICTION OVER ALL OF THE RESPONDENT'S EMPLOYEES.

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4279-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN, WEBSTER CORNWALL AND M. JANJEVICH FOR THE APPLICANT; W. GIBSON GRAY, Q.C., A. PURDON AND IAN JOHNSTON

FOR THE RESPONDENT; R. C. FILION, R. E. HANN AND D. W. SHINGLER FOR THE OBJECTORS.

DECISION OF THE BOARD: OCTOBER 24, 1973.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS HEARD BY THE BOARD ON SEPTEMBER 19, 1973. SUBSEQUENT TO THE HEARING THE APPLICANT, BY LETTER DATED SEPTEMBER 26, 1973, ADVISED THAT IT HAD REASON TO BELIEVE THAT THERE HAD BEEN SOME IRREGULARITIES WITH RESPECT TO THE MEMBERSHIP EVIDENCE AND CONSEQUENTLY FELT IT HAD NOT ALTERNATIVE BUT BRING THEM TO THE ATTENTION OF THE BOARD AND TO REQUEST LEAVE TO WITHDRAW THE APPLICATION.

3. THE RESPONDENT, IN A LETTER TO THE BOARD DATED OCTOBER 5, 1973, OPPOSED THE APPLICATION FOR LEAVE TO WITHDRAW AND REQUESTED THAT THE MATTER BE LISTED FOR HEARING IN ORDER THAT THE RESPONDENT MIGHT HAVE THE OPPORTUNITY TO MAKE SUBMISSIONS WITH RESPECT TO A TIME BAR IN THE EVENT THAT THE APPLICATION BE DISMISSED.

4. UNDER SECTION 92(1)(1) OF THE LABOUR RELATIONS ACT, THE BOARD HAS POWER TO BAR AN UNSUCCESSFUL APPLICANT FOR A PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL, OR TO REFUSE TO ENTERTAIN A NEW APPLICATION BY AN UNSUCCESSFUL APPLICANT AT ANY TIME WITHIN THE SAME TEN MONTH PERIOD.

5. THE BOARD IS OF THE VIEW THAT THE REPRESENTATIONS THE RESPONDENT SEEKS TO MAKE OUGHT PROPERLY TO BE HEARD IN THE EVENT THAT THE APPLICANT REAPPLIES FOR CERTIFICATION RATHER THAN AT THE PRESENT TIME. THE RESPONDENT'S SUBMISSIONS MAY THEN BE DIRECTED TOWARD THE SECOND ALTERNATIVE CONTAINED IN SECTION 92(1)(1) OF THE ACT. THE CONCLUSION OF THE BOARD IN THIS RESPECT IS BASED UPON THE REASONING SET OUT IN THE FOLLOWING CASES:

HI WAY MARKET LIMITED, OLRB MONTHLY REPORTS
DECEMBER 1967, P. 835;

THE WATSON MANUFACTURING COMPANY OF PARIS
LIMITED, OLRB MONTHLY REPORTS AUGUST 1968,
P. 441;

CAMPBELL SOUP COMPANY LTD., OLRB MONTHLY
REPORTS FEBRUARY 1968, P. 1091;

ED WALKERS ELECTRIC LTD., OLRB MONTHLY
REPORTS DECEMBER 1969, P. 1067.

6. THE BOARD, HAVING REGARD TO THE FOREGOING AND THE TIME IN THE PROCEEDING AT WHICH THE REQUEST TO WITHDRAW WAS MADE, DISMISSES THE APPLICATION.

4291-73-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478
AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. RED CROSS
HOSPITAL, BURKS FALLS, ONTARIO (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN
 AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J.H. NICHOLLS AND T. LOVERING FOR THE
 APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER A. MAIN:
 OCTOBER 17, 1973.

1. HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT AS ADDUCED
 AT THE HEARING OF THIS MATTER ON SEPTEMBER 17, 1973, THE NAME OF THE
 APPLICANT APPEARING ON THE STYLE OF CAUSE OF THIS APPLICATION AS "SERVICE
 EMPLOYEES UNION LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C., IS
 AMENDED TO READ: "BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL
 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C.".

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT
 BURKS FALLS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE AND UN-
 DERGRADUATE NURSING STAFF, GRADUATE AND UNDER-GRADUATE PHARMACISTS, FORE-
 MEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR,
 OFFICE STAFF, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD ONLY AND
 PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE
 A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAIN-
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4. AN EXAMINATION OF THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP
 IN THE APPLICANT, WHICH CONSISTS OF COMBINED APPLICATIONS AND RECEIPTS,
 DISCLOSES THAT THE APPLICATIONS ARE FOR MEMBERSHIP IN "SERVICE EMPLOYEES'
 INTERNATIONAL UNION, LOCAL 478, A.F.L. - C.I.O. - C.L.C.". THE QUESTION
 NOW BEFORE THIS BOARD IS WHETHER THESE DOCUMENTS DO, IN EFFECT, CONSTITUTE
 MEMBERSHIP IN THE APPLICANT BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION,
 LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. PUT ANOTHER WAY, ARE
 THESE DOCUMENTS DEFECTIVE BY REASON THAT THEY OMIT THE WORD "BUILDING" SUCH
 THAT THEY DO NOT PROPERLY SET OUT THE CORRECT NAME OF THE APPLICANT?

5. HAVING CAREFULLY REVIEWED THE PRINCIPLES AS SET OUT IN THE IRON
RANGE BUS LINES LIMITED CASE OLRB M.R. SEPTEMBER 1972, P. 842, WE FIND
 THAT SUCH AN OMISSION CONSTITUTES A MERE TECHNICAL DEFECT AND THAT NO
 ONE COULD BE REASONABLY MISLED OR CONFUSED AS REGARDS ITS APPLICABILITY
 TO THE APPLICANT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE
 IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT
 IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS

OF THE APPLICANT ON SEPTEMBER 5, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: OCTOBER 17, 1973.

1. I DISSENT.

2. THE APPLICATION IN THIS MATTER WAS MADE BY AN ENTITY KNOWN AS 'SERVICE EMPLOYEES UNION LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C.'. ALL POSTINGS TO EMPLOYEES INDICATED AN APPLICATION BY SUCH ENTITY.

3. AT THE HEARING THE APPLICANT REQUESTED, AND THE BOARD GRANTED, AN AMENDMENT TO THE STYLE OF CAUSE, SO THAT THE NEW APPLICANT BECAME 'BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C.'. WITH THIS AMENDMENT, I AGREED.

4. THE EVIDENCE OF MEMBERSHIP WHICH THE AMENDED APPLICANT 'BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C.' SUBMITTED IN SUPPORT OF ITS APPLICATION, ARE APPLICATIONS FOR MEMBERSHIP AND RECEIPTS IN AN ENTITY KNOWN AS 'SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 478, A.F.L. - C.I.O. - C.L.C.'.

5. IT BECOMES READILY APPARENT THAT THE EVIDENCE OF MEMBERSHIP IS IN AN ENTITY BOTH DIFFERENT FROM THE ENTITY SHOWN IN THE APPLICATION WHICH WAS POSTED TO EMPLOYEES, AND DIFFERENT FROM THE ENTITY WHICH THE BOARD GRANTED ON THE APPLICANT'S REQUEST FOR AN AMENDMENT.

6. THE CASES OF THIS BOARD ARE LEGION TO THE EFFECT THAT THE APPLICANT MUST BE MOST CIRCUMSPECT IN THE FORM OF THE EVIDENCE OF MEMBERSHIP ON WHICH IT WISHES THE BOARD TO RELY.

7. THE UNION APPLICANT ONLY MUST BE RESPONSIBLE FOR THE NAME IN WHICH IT MADE ITS APPLICATION. THE UNION APPLICANT ONLY MUST BE RESPONSIBLE FOR THE NAME TO WHICH IT REQUESTED THE BOARD TO AMEND ITS APPLICATION. THE UNION APPLICANT ONLY MUST BE RESPONSIBLE FOR THE MEMBERSHIP EVIDENCE WHICH IT SUBMITS IN SUPPORT OF ITS APPLICATION. TO THE LAYMAN, AND ESPECIALLY TO THE INDIVIDUAL MEMBERS, OF THE BARGAINING UNIT, IT WOULD SEEM THAT THERE ARE THREE DIFFERENT ENTITIES INVOLVED.

8. THE MAJORITY, IN ITS DECISION, HAVE REFERRED TO THE IRON RANGE BUS LINES LIMITED CASE, OLRB REP. SEPTEMBER (1972) 842 IN SUPPORT OF ITS FINDINGS. IN MY OPINION, BOTH THE DECISION IN THAT CASE AND IN THE INSTANT ONE, ARE BOTH ORIGINAL AND AT VARIANCE WITH THE BOARD'S JURISPRUDENCE.

9. IN MY OPINION, THE GORDON M. MACEachern Limited Case, OLRB REP. MAY (1972) 404 MORE CLOSELY REFLECTS THE POSITION OF THE BOARD IN SUCH MATTERS. IN THAT CASE THE BOARD STATED:

"A QUESTION ALSO ARISES WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN THIS APPLICATION. AN EXAMINATION OF THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT SHOWS THAT THEY COMPRISE COMBINED APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE APPLICANTS, HOWEVER, ARE FOR MEMBERSHIP IN BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 AND NOT FOR MEMBERSHIP IN THE APPLICANT, SERVICE EMPLOYEES UNION LOCAL 268.

THIS OBVIOUS DEFECT IN THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP RENDERS THEM INEFFECTIVE AS PROOF OF MEMBERSHIP IN THE APPLICANT. IN THE CIRCUMSTANCES, IT BECOMES UNNECESSARY FOR THE BOARD TO DEAL WITH THE QUESTION OF STATUS SINCE, IN ANY EVENT, THE EVIDENCE OF MEMBERSHIP WOULD REMAIN DEFECTIVE."

10. IN MY OPINION, THE EVIDENCE OF MEMBERSHIP HEREIN IS DEFECTIVE, AND THE APPLICATION SHOULD, ACCORDINGLY, BE DISMISSED.

4434-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LONDON MOTOR PRODUCTS (1968) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. D. BELL.

APPEARANCES AT THE HEARING: H. CARL ANDERSON AND HOWARD POWERS FOR THE APPLICANT; DONALD J. MCKILLOP, Q.C., AND W. BAILEY FOR THE RESPONDENT; GERALD W. CAPON FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL:
OCTOBER 23, 1973.

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5. THE APPLICANT INTRODUCED EVIDENCE WHICH ESTABLISHED THAT THE RESPONDENT MADE CERTAIN STATEMENTS TO EMPLOYEES WHEREIN THE RESPONDENT EXPRESSED VIEWS CONCERNING THE DESIRABILITY OF HAVING THE APPLICANT REPRESENT ITS EMPLOYEES. WHILE IT WAS CLEAR THAT THE RESPONDENT WAS OPPOSED TO UNION REPRESENTATION OF ITS EMPLOYEES AT THE PRESENT TIME,

THE RESPONDENT DID NOT THREATEN ITS EMPLOYEES OR MAKE ANY PROMISES TO ITS EMPLOYEES. WE ARE OF THE VIEW THAT THE STATEMENTS MADE BY THE RESPONDENT WERE MERELY AN EXPRESSION OF THE RESPONDENT'S VIEWS AS PERMITTED UNDER SECTION 56 OF THE LABOUR RELATIONS ACT AND DID NOT CONSTITUTE COERCION, INTIMIDATION, THREATS, PROMISES, OR UNDUE INFLUENCE. THE RESPONDENT ALSO GRANTED INCREASES IN WAGES TO THREE OF THE FIVE EMPLOYEES IN THE PARTS DEPARTMENT AFTER NOTICE OF THE UNION'S ORGANIZING CAMPAIGN CAME TO THE ATTENTION OF THE RESPONDENT. NONE OF THE OTHER 51 EMPLOYEES IN THE BARGAINING UNIT WERE GRANTED OR OFFERED AN INCREASE IN WAGES. THE EVIDENCE ESTABLISHED, HOWEVER, THAT THESE INCREASES HAD BEEN PLANNED PRIOR TO THE RESPONDENT BECOMING AWARE OF THE UNION'S CAMPAIGN AND WERE PART OF A REORGANIZATION OF THE PARTS DEPARTMENT WHICH INCLUDED THE APPOINTMENT OF A NEW PARTS MANAGER ON SEPTEMBER 15, 1973. THE APPLICANT COMMENCED SIGNING UP MEMBERS ON OR ABOUT SEPTEMBER 17. WHILE SOME OF THE RESPONDENT'S DEALINGS WITH ITS EMPLOYEES AFTER NOTICE OF THE APPLICANT'S CAMPAIGN CAME TO ITS ATTENTION MAY HAVE BEEN UNWISE, WE ARE OF THE VIEW THAT THE ACTIVITIES OF THE RESPONDENT WHICH WERE CRITICIZED BY THE APPLICANT WERE NOT SUCH AS TO CAUSE US TO REFUSE TO GIVE EFFECT TO THE DOCUMENT WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION.

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9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. B. ARCHER: OCTOBER 23, 1973.

I DISSENT.

I WOULD FIND THAT THE RESPONDENT'S ACTIVITIES CONSTITUTED UNDUE INFLUENCE WHICH WOULD PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING FREELY DISCLOSED IN A REPRESENTATION VOTE IN THIS MATTER. I WOULD ACCORDINGLY HAVE CERTIFIED THE APPLICANT WITHOUT A VOTE.

4399-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) v. TRILLIUM RECREATIONAL VEHICLES LIMITED (RESPONDENT) v.
GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 24, 1973.

1. THE RESPONDENT IN THESE CERTIFICATION PROCEEDINGS SOUGHT TO EXCLUDE FROM THE BARGAINING UNIT "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK".

2. THE MATTER WAS DISCUSSED AT THE HEARING BEFORE THE BOARD WHERE IT BECAME EVIDENT THAT AT THE DATE THE APPLICATION WAS MADE, NAMELY, SEPTEMBER 14, 1973, THE RESPONDENT HAD NO SUCH PERSONS IN ITS EMPLOY

NOR DID IT HAVE ANY HISTORY OF EMPLOYING SUCH PERSONS. THE BOARD, IN LIGHT OF THE FOREGOING, DECLINED TO GRANT THE EXCLUSION SOUGHT BY THE RESPONDENT AND ISSUED A CERTIFICATE COVERING THE APPROPRIATE BARGAINING UNIT AS IT WAS ON THE DATE OF THE APPLICATION.

3. IN A LETTER TO THE BOARD DATED OCTOBER 5, 1973, COUNSEL FOR THE RESPONDENT STATED THAT HE HAD BEEN ADVISED THAT SINCE THE DATE OF THE APPLICATION, THE RESPONDENT HAD HIRED EMPLOYEES WHO WOULD BE WORKING LESS THAN 24 HOURS PER WEEK. ON THE BASIS OF THIS, THE RESPONDENT REQUESTS THE BOARD TO EXCLUDE FROM THE BARGAINING UNIT "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK".

4. FOR THE PURPOSES OF CERTIFICATION, THE BOARD DETERMINES THE APPROPRIATE BARGAINING UNIT ON THE DATE OF THE APPLICATION FOR CERTIFICATION. IT OUGHT TO BE APPARENT, QUITE APART FROM THE PROVISIONS OF THE LABOUR RELATIONS ACT, THAT THE BOARD CANNOT, IF THERE IS TO BE ANY TERMINATION TO THE PROCEEDINGS, AMEND CERTIFICATES TO CONFORM TO ANY CHANGE THAT MAY OCCUR IN A BARGAINING UNIT SUBSEQUENT TO THE DATE OF THE APPLICATION.

5. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

3900-73-M: THE CORPORATION OF THE TOWNSHIP OF GEORGINA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1312 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: OCTOBER 24, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 95(2) OF THE LABOUR RELATIONS ACT.

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6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED OCTOBER 5, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT MR. C. CHIRNSIDE AS CHIEF BUILDING AND BY-LAWS OFFICER RUNS HIS DEPARTMENT AND HAS NO ASSIGNED GEOGRAPHIC AREA TO PERFORM DUTIES WHICH ARE REGULARLY PERFORMED BY THE THREE BUILDING AND BY-LAWS OFFICERS UNDER HIS AUTHORITY. WHILE HE AT TIMES PERFORMS WORK SIMILAR TO THAT PERFORMED BY THE BUILDING AND BY-LAWS OFFICERS, HE DOES SO ONLY WHEN THEY REQUIRE HIS OPINION OR ADVICE ON THEIR WORK. HE REGULARLY ATTENDS MANAGEMENT MEETINGS ALONG WITH OTHER DEPARTMENT HEADS. HE IS INVOLVED IN THE HIRING PROCESS, ASSIGNS WORK ON A DAILY BASIS AND HAS THE AUTHORITY TO CHANGE THE WORK THAT HE HAS ASSIGNED. HE INSPECTS THE WORK PERFORMED BY PERSONS UNDER HIS DIRECTION AND CONTROL AND HAS RESPONSIBILITY FOR THE QUALITY AND QUANTITY OF THEIR WORK. MR. CHIRNSIDE IS REQUIRED TO ASSESS THE PERFORMANCE OF NEW EMPLOYEES AND HAS

THE AUTHORITY TO TAKE CORRECTIVE DISCIPLINARY ACTION. HE SIGNS THE TIME SHEETS OF THE EMPLOYEES HE SUPERVISES AND ON HIS OWN AUTHORITY AUTHORIZES OVERTIME WORK. HE ALSO HAS THE AUTHORITY TO GRANT TIME OFF AND HAS EXERCISED THIS AUTHORITY.

7. IN LIGHT OF THE ABOVE EVIDENCE, WE FIND THAT MR. CHIRNSIDE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

4520-73-R: LOCAL UNION 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. H. ALLAIRE AND SONS COMPANY LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: LOU POPOVICH, FOR THE APPLICANT; AND K. R. VALIN AND LUCIEN ALLAIRE, FOR THE RESPONDENT.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE: OCTOBER 26, 1973.

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4. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS:

ALL JOURNEYMEN, ELECTRICIANS AND ELECTRICAL APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN EMPLOYED BY THE RESPONDENT IN THE TOWNSHIPS OF DANA, MCWILLIAMS, CRERAR, GIBBONS, HUGEL AND BADGEROW IN THE DISTRICT OF NIPISSING.

5. THE RESPONDENT HAS TAKEN THE POSITION THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED AS:

ALL JOURNEYMEN ELECTRICIANS AND ELECTRICAL APPRENTICES OF THE RESPONDENT WITHIN A 25 MILE RADIUS OF STURGEON FALLS, ONTARIO SAVE AND EXCEPT NON-WORKING FOREMEN.

6. THE RESPONDENT HAS ITS PLACE OF BUSINESS IN THE TOWN OF STURGEON FALLS AND ON THE DATE OF THE MAKING OF THIS APPLICATION EMPLOYED SIX ELECTRICIANS AND ELECTRICIANS' APPRENTICES. ON THAT DATE, TWO OF THESE EMPLOYEES WERE WORKING AT RIVER VALLEY IN THE TOWNSHIP OF CRERAR, TWO WERE WORKING IN STURGEON FALLS AND TWO WERE WORKING IN CACHE BAY TO THE WEST OF STURGEON FALLS.

7. THE PARTIES AGREE THAT ON THE DATE OF THE MAKING OF THIS APPLICATION THERE WERE TWO EMPLOYEES IN THE APPLICANT'S PROPOSED BARGAINING UNIT AND SIX EMPLOYEES IN THE RESPONDENT'S PROPOSED BARGAINING UNIT. RIVER VALLEY, STURGEON FALLS AND CACHE BAY ARE NOT INCLUDED IN ANY OF THE BOARD'S REGULAR GEOGRAPHIC AREAS. HOWEVER, IN THE PAST THE BOARD HAS ISSUED CERTIFICATES WITH REFERENCE TO SEPARATE JOB SITES IN RIVER VALLEY AND STURGEON FALLS. IN THE FORMER SITUATION, THE BOARD DETERMINED THAT THE GEOGRAPHIC AREA TO BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT WAS THE TOWNSHIPS OF DANA, McWILLIAMS, CRERAR, GIBBONS, HUGEL AND BADGEROW IN THE DISTRICT OF NIPISSING. SEE, FOR EXAMPLE, THE WINSON CONSTRUCTION LTD. CASE, BOARD FILE 3920-73-R. IN THE LATTER SITUATION, THE BOARD DETERMINED THAT THE GEOGRAPHIC AREA TO BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT WAS THE TOWNSHIPS OF SPRINGER, CALDWELL, BADGEROW, FIELD, GRANT AND PEDLEY, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE. SEE, FOR EXAMPLE, THE FARQUHAR CONSTRUCTION LIMITED CASE, BOARD FILE 14922-68-R.

8. HOWEVER, THE GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN WERE DETERMINED IN THE CIRCUMSTANCES OF THE APPLICATION AND AS AN INTERIM MEASURE. ACCORDINGLY, SUCH GEOGRAPHIC AREAS MAY NOT BE RELIED UPON AS INDICATING THE FINAL VIEWS OF THE BOARD OR AS BEING OF GENERAL APPLICATION IN ALL CIRCUMSTANCES. IN OUR VIEW, THE FACT THAT THE GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN WERE DETERMINED IN THE CIRCUMSTANCES OF THE APPLICATION AND AS AN INTERIM MEASURE IS IN ITSELF AN INDICATION TO THE PARTIES THAT EACH APPLICATION, PAST AND PRESENT, IS TO BE DETERMINED IN THE LIGHT OF THE CIRCUMSTANCES OF EACH APPLICATION.

9. THE RADIUS OF 25 MILES FROM STURGEON FALLS PROPOSED BY THE RESPONDENT IS UNSATISFACTORY FOR TWO REASONS. FIRSTLY, THE BOARD HAS STATED ON SEVERAL OCCASIONS THAT IT DOES NOT REGARD GEOGRAPHIC AREAS DEFINED IN TERMS OF A RADIUS AS BEING SATISFACTORY. SUCH DESCRIPTIONS FREQUENTLY MAKE IT DIFFICULT TO DETERMINE WHETHER A GIVEN JOB SITE FALLS WITH OR WITHOUT THE BOUNDARY OF THE RADIUS. SECONDLY, THE RADIUS OF 25 MILES FROM STURGEON FALLS OVERLAPS THE BOARD'S REGULAR GEOGRAPHIC AREAS, NUMBERS 16 AND 17. WE NOTE THAT THERE IS ALSO AN OVERLAP (THE TOWNSHIP OF BADGEROW) BETWEEN THE TWO GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN.

10. IN THE CIRCUMSTANCES OF THIS APPLICATION AND AS AN INTERIM MEASURE WE FURTHER FIND THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DANA, McWILLIAMS, CRERAR, GIBBONS, HUGEL, BADGEROW, FIELD, GRANT CALDWELL, SPRINGER AND PEDLEY IN THE DISTRICT OF NIPISSING, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-MILE RADIUS OF THE NORTH BAY POST OFFICE AND FURTHER EXCEPTING THOSE PORTIONS OF THE TOWNSHIPS OF DANA, CRERAR, AND HUGEL WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A THIRTY-FIVE

MILE RADIUS FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

12. IN THE RESULT, THIS APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: OCTOBER 26, 1973.

I DISSENT. HAVING GRANTED THE AREA REQUESTED BY THE APPLICANT ON PREVIOUS OCCASIONS, I WOULD HAVE GRANTED A CERTIFICATE TO THE APPLICANT FOR THE BARGAINING UNIT IT SEEKS.



CASE LISTINGS OCTOBER 1973

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TABLE VREPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	8	38	18
POST-HEARING VOTE	24	44	26
BALLOTS NOT COUNTED	-	-	2
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	7	21	18
POST-HEARING VOTE	10	18	33
BALLOTS NOT COUNTED	<u>1</u>	<u>2</u>	<u>2</u>
TOTAL	50	123	99
	<u>=</u>	<u>=</u>	<u>=</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VIREPRESENTATION VOTES IN TERMINATION APPLICANTS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND QUARTER	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
*RESPONDENT UNION SUCCESSFUL	1	3	-
RESPONDENT UNION UNSUCCESSFUL	<u>7</u>	<u>8</u>	<u>9</u>
TOTAL	8	11	9
	<u>=</u>	<u>=</u>	<u>=</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

2427-72-R: ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 (INTERVENER #2) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (INTERVENER #3) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (INTERVENER #4) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 765 (INTERVENER #5) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (INTERVENER #6).

UNIT: "ALL EMPLOYERS OF MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES ON WHOSE BEHALF THE RESPONDENT IS ENTITLED TO BARGAIN IN THE PROVINCE OF ONTARIO AND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

[1972] 2 OLRB M.R. - PAGE 545.

3682-73-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL UNION No. 1703 - C.L.C. (APPLICANT) V. UNDERWRITERS' LABORATORIES OF CANADA (RESPONDENT) V. GROUPS OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE COMPTROLLER, PERSONS ABOVE THE RANK OF COMPTROLLER, SECRETARY TO THE GENERAL MANAGER, PROFESSIONAL AND GRADUATE ENGINEERS, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY." (33 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE FOLLOWING CLASSIFICATIONS ARE EXCLUDED FROM THE AFORESAID BARGAINING UNIT: CHIEF TECHNICIAN; PLANT SUPERINTENDENT; ADMINISTRATOR OF STANDARDS AND RECORDS DEPARTMENT; ASSISTANT CHIEF INSPECTOR; ASSISTANT CHIEF ENGINEER; CHIEF INSPECTOR; CHIEF ENGINEER.).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE PLANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF PLANT SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF, PROFESSIONAL AND GRADUATE ENGINEERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #3 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

3777-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS, AND ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENTS AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

3811-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORNWALL ELECTRIC (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT THE GENERAL MANAGER, ASSISTANT GENERAL MANAGER, EXECUTIVE VICE PRESIDENT, COMPTROLLER, CHIEF ENGINEER, SECRETARY TO THE GENERAL MANAGER, EQUIPMENT AND MAINTENANCE SUPERINTENDENT, SERVICE AND SALES SUPERINTENDENT, LINE SUPERVISOR, LINE CREW FOREMEN, SUBSTATION FOREMAN, SALES SUPERVISOR, SERVICE SUPERVISOR, CREDIT SUPERVISOR AND ACCOUNTANT, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY THE EXISTING COLLECTIVE AGREEMENT WITH CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1371." (23 EMPLOYEES IN THE UNIT).

3856-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE HOLIDAY INN OF CHATHAM OF THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT 25 KEIL DRIVE NORTH IN CHATHAM, SAVE AND EXCEPT INNKEEPER, ASSISTANT INNKEEPER, CATERING MANAGER, HOUSEKEEPER, MAITRE D', CHEF, SOUS CHEF, FRONT DESK MANAGER, SECRETARY TO INNKEEPER, SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

3908-73-R: NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT OTTAWA ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUB-

SISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA." (241 EMPLOYEES IN THE UNIT). (HAVING REGARD TO ALL OF THE FOREGOING).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

3915-73-R: NURSES' ASSOCIATION NORFOLK GENERAL HOSPITAL (APPLICANT) V. NORFOLK HOSPITAL ASSOCIATION (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES ENGAGED IN A NURSING CAPACITY EMPLOYED BY THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (77 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS TEACHERS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1.).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES ENGAGED IN A NURSING CAPACITY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK EMPLOYED BY THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (24 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS TEACHERS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2.).

4050-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. WINDSOR WESTERN HOSPITAL CENTRE INC. (I.O.D.E. UNIT) (RESPONDENT).

UNIT: "ALL RADIOLOGICAL TECHNICIANS EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT THE ASSISTANT CHIEF RADIOLOGICAL TECHNICIAN AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF RADIOLOGICAL TECHNICIAN, OFFICE AND CLERICAL STAFF, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1132, BETWEEN THE RESPONDENT AND SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210, AND BETWEEN THE RESPONDENT AND THE NURSES ASSOCIATION - I.O.D.E. HOSPITALS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4091-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL PERSONS REGULARLY EMPLOYED BY THE RESPONDENT IN STONEY CREEK, FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

4159-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SMITH'S DAIRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT FOREMEN, ASSISTANT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ASSISTANT ROUTE SUPERVISOR, OFFICE STAFF, DAIRY BAR EMPLOYEES, STUDENTS REGULARLY EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT MORRISBURG, SAVE AND EXCEPT ASSISTANT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT ROUTE SUPERVISOR, OFFICE STAFF, DAIRY BAR EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

(BARGAINING UNIT #3 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

4235-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. LESMAR CONSTRUCTION LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK, THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING, THE TOWNS OF OAKVILLE AND MILTON, THE COUNTY OF HALTON, AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (10 EMPLOYEES IN THE UNIT).

4257-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #38 (APPLICANT) v. ANTICI CONSTRUCTION COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALD-IMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

4286-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CARTER TEMRO LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAMME." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE PERSONS OCCUPYING THE POSITION OF WORKING FOREMEN EXERCISE MANAGERIAL FUNCTIONS AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.).

4291-73-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. RED CROSS HOSPITAL, BURKS FALLS, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURKS FALLS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE AND UNDERGRADUATE NURSING STAFF, GRADUATE AND UNDER-GRADUATE PHARMACISTS, FOREMEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD ONLY AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 549.

4327-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NICKEL CENTRE NURSING HOME (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT GARSON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL NURSING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

4328-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CYPRUSS RAPIDS CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT, WORKING IN AND OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4335-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

4347-73-R: RETAIL CLERKS UNION, LOCAL 486 (APPLICANT) V. G. TAMBLYN, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT GRADUATE AND UNDER-GRADUATE PHARMICISTS ARE ABOVE THE RANK OF MERCHANDISE MANAGER AND ARE, THEREFORE, EXCLUDED FROM THE BARGAINING UNIT.).

4355-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BURNDY CANADA LTD. (RESPONDENT).

UNIT: "ALL PRODUCTION PLANT EMPLOYEES OF THE RESPONDENT LOCATED AT 1530 BIRCHMOUNT ROAD, SCARBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, INDUSTRIAL NURSE, CAFETERIA ATTENDANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (202 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4358-73-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT YORK CONDOMINIUM CORPORATION, #42, 330 DIXON ROAD, ETOBICOKE, SAVE AND EXCEPT RESIDENT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF RESIDENT SUPERINTENDENT, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT." (3 EMPLOYEES IN THE UNIT).

4359-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. SAL PIAMONTE & SONS, PAINTING CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OF THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

4365-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. AIR MASTER OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WESTMINSTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (37 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 540.

4366-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. AURELIEN BIOLY INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4369-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN NICKEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE KITCHEN AND BUNK-HOUSES AT ITS MINE AND PLANT OPERATIONS SITUATE APPROXIMATELY TEN (10)

MILES FROM SHEBANDOWAN, SAVE AND EXCEPT FOREMEN AND FIRST COOK, PERSONS ABOVE THE RANK OF FOREMAN AND FIRST COOK, OFFICE AND CLERICAL STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4381-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MCINTYRE PORCUPINE MINES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT SCHUMACHER, SAVE AND EXCEPT SUPERVISORS, SHIFT BOSSES, FOREMEN, PERSONS OF RANK EQUAL TO OR HIGHER THAN SUPERVISOR, SHIFT BOSS AND FOREMAN, ASSISTANT PAYMASTER AND RECORDS, ASSISTANT ACCOUNTANT, CHIEF CHEMIST, EXECUTIVE SECRETARY AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4385-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. HOGARTH GALVANIZING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4388-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. ARSANDCO INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4391-73-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION NO. 7 (APPLICANT) V. M & U MASONRY CO. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

4399-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. TRILLIUM RECREATIONAL VEHICLES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKHAM, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

4403-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. HEINZ HUMMEL LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4419-73-R: LOCAL UNION 2345, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF THE CITY OF KITCHENER (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (41 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT JANITORS ARE INCLUDED IN THE BARGAINING.). (FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT THE FOLLOWING CLASSIFICATIONS ARE EXCLUDED FROM THE BARGAINING UNIT: PROFESSIONAL ENGINEERS, METER MAINTENANCE FOREMAN, FLEET MAINTENANCE SUPERVISOR, METER AND RELAY DEPARTMENT FOREMEN, PURCHASING AGENT, BUILDING SUPERINTENDENT, UNDERGROUND DISTRIBUTION ENGINEER, SALES REPRESENTATIVE, PAYROLL SUPERVISOR, METER READER SUPERVISOR, CONSUMER SERVICE DESIGNER, SECRETARY TO THE GENERAL MANAGER, SECRETARY TO THE OFFICE MANAGER, SECRETARY TO THE OPERATIONS MANAGER, SECRETARY-TREASURER, ENGINEERING MANAGER, BILLING SUPERVISOR, GENERAL SUPERVISOR OF CASHIERS, CREW FOREMEN, LINE SUPERINTENDENT, STATION SUPERINTENDENT, CONSTRUCTION SUPERINTENDENT, POSTIES, OPERATIONS ENGINEER, ENGINEERING SERVICES SUPERVISOR, CREDIT MANAGER, PROGRAMMER/ANALYST, BILLING SUPERINTENDENT, OVERHEAD DISTRIBUTION DESIGNER, DATA PROCESSING MANAGER, SECRETARY TO THE SECRETARY-TREASURER, SECRETARY TO THE ENGINEERING MANAGER, GENERAL MANAGER, OFFICE MANAGER, OPERATIONS MANAGER, GENERAL SUPERVISOR OF INQUIRY & SYSTEMS PLANNER.).

4422-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. K. H. PRESTON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

4426-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE VILLAGE OF PORT PERRY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK AND ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF CLERK AND ROAD SUPERINTENDENT, OFFICE, TECHNICAL AND CLERICAL EMPLOYEES." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4428-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. CAMBRIAN PAVING CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4435-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHN BOS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4436-73-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. NEW ELECTRIC INCORPORATED (RESPONDENT).

UNIT #1: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NAS-SAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

4437-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. GROUP BUILDINGS SYSTEMS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4440-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. H. BERNARD (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

4445-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE VILLAGE OF CANNINGTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT MUNICIPAL WORKS SUPERINTENDENT, PERSONS ABOVE THE RANK OF MUNICIPAL WORKS SUPERINTENDENT, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

4447-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. MEDFAIR CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4452-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CITY VIEW SEAMLESS FLOORING COMPANY LTD. (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOORING IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4455-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. RABITO CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT).

4456-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PALM DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

4466-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL #53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. LAPIN ENTERPRISES INC. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4469-73-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS OF THE RESPONDENT IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND INVESTIGATORS." (26 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT SERGEANTS ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF SUPERVISORS).

4471-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. J. R. B. CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4472-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. FRED KOCH CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

4476-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ALGOMA DISTRICT SOCIAL AND FAMILY SERVICES BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL, FIELD AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT THE DIRECTOR, DEPUTY DIRECTOR AND OFFICE MANAGER." (11 EMPLOYEES IN THE UNIT).

4477-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. THIBEAU TRUCK SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4481-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. PIGOTT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4483-73-R: CANADIAN TRANSPORTATION WORKER'S UNION #199 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. CATHCART FREIGHT LINES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND EMPLOYEES EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4484-73-R: CANADIAN TRANSPORTATION WORKER'S UNION #188 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4489-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT OFFICE MANAGER, THOSE ABOVE THE RANK OF OFFICE MANAGER, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4497-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNITED FUELS OF (OTTAWA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND TRUCK DRIVERS WHO ARE NOT ENGAGED IN SERVICING OIL BURNERS." (7 EMPLOYEES IN THE UNIT).

4498-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TEXACO CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND TRUCK DRIVERS WHO ARE NOT ENGAGED IN SERVICING OIL BURNERS." (17 EMPLOYEES IN THE UNIT).

4502-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. OLYMPIA AND YORK DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 56 WELLESLEY STREET W. (SUNOCO BUILDING), SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4503-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1081 (APPLICANT) V. WAYNCO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4504-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. NIMEC MASONRY CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4506-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. DOMTAR CONSTRUCTION MATERIALS LTD., ARBORITE DIVISION - VAUGHAN PLANT (RESPONDENT).

UNIT: "ALL OFFICE STAFF OF THE RESPONDENT AT ITS PREMISES IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT OUTSIDE SALESMEN, SALES CO-ORDINATOR, PURCHASING AGENT, ACCOUNTANT, FOREMEN AND SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND SECRETARIES TO MANAGERS." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4509-73-R: GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NEWMAN BROS. COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4512-73-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O. & C.L.C. (APPLICANT) V. NIPIGON RED ROCK BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIPS OF NIPIGON, LYON, STERLING AND DORION, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4513-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. WHEATLEY MANUFACTURING DIVISION OF ELCO-WOOD INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PLANT MANAGER AND GENERAL SALES MANAGER, PERSONS ABOVE THE RANK OF PLANT MANAGER AND GENERAL SALES MANAGER AND SALESMEN." (4 EMPLOYEES IN THE UNIT).

4518-73-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. MORRISON LAMOTHE FOODS LIMITED (FROZEN FOOD DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (113 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4521-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. GARDEN CITY PLUMBING & HEATING CO. LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

4527-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4529-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. BUNTIN REID PAPER CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES IN THE UNIT).

4533-73-R: THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WAFERBOARD CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (76 EMPLOYEES IN THE UNIT).

4535-73-R: LOCAL 12-L, TORONTO, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) V. MACKINNON - MONCUR LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4537-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. GALT SAND & GRAVEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT FOREMEN AND DISPATCHERS AND PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

4544-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. PAUL REVERE CLOTHES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, SALES AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4553-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. ALL GLASS & ACOUSTICS SERVICE CO. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4561-73-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CONSUMERS GLASS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND OFFICE, CLERICAL AND SALES STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4569-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CENTURY COAL COMPANY DIVISION OF CANADA STEAMSHIP LINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. (4 EMPLOYEES IN THE UNIT).

4570-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. KNAPP'S CARTAGE AND MOVING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT THE MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4576-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. DONALD ROSS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4581-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. GROSSI CONSTRUCTION (RESPONDENT).

UNIT: "ALL BRICKLAYERS, BRICKLAYERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4585-73-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA (APPLICANT) V. H. L. BLACHFORD LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4593-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHN BOS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4609-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 894 AFL-CIO-CLC (APPLICANT) V. ELWOOD R. LITTLE ELECTRICAL CONTRACTOR (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4622-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

4623-73-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION NO. 7 (APPLICANT) V. P. U. Z. MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4628-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. ARTHUR BRIERE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3862-73-R: NURSES' ASSOCIATION VICTORIA HOSPITAL, LONDON (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN A NURSING CAPACITY AT LONDON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (576 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		474
NUMBER OF PERSONS WHO CAST BALLOTS	266	
BALLOTS SEGREGATED AND NOT COUNTED	26	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	231	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	9	

4163-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. READY WOOD - PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

4307-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NEWMAN STEEL WAREHOUSE LIMITED (RESPONDENT) V. TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #1) V. LOCAL 215 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 12 TEAL AVENUE, TOWNSHIP OF SALT FLEET; 65 NORTH STREET, ST. CATHARINES; OAKDALE AVENUE, ST. CATHARINES, AND 459 BURLINGTON STREET EAST, HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY POLICE AND WATCHMEN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (166 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	148
NUMBER OF PERSONS WHO CAST BALLOTS	132
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	127
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER #2	5

4349-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WIMCO STEEL SALES COMPANY LIMITED (RESPONDENT) V. CANADIAN STEEL WAREHOUSEMEN WORKERS UNION #201 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRUCK DRIVERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (80 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS	78	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	76	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

4368-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CONSO-
LIDATED-BATHURST PACKAGING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BAG AND FLEXIBLE PACKAGING
DIVISION, BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF
FOREMAN, OFFICE AND SALES STAFF, ART DEPARTMENT STAFF, DESIGN DEPARTMENT
STAFF, TECHNICAL AND DEVELOPMENT DEPARTMENT STAFF, PRODUCTION SCHEDULERS,
QUALITY CONTROL DEPARTMENT STAFF, PACKERS SERVICE TECHNICIAN, CAFETERIA
STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN
THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

3856-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) V. THE HOLIDAY INN OF CHATHAM OF THE COMMONWEALTH HOLIDAY
INNS OF CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT 25 KEIL DRIVE NORTH IN
CHATHAM REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES
IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		45
NUMBER OF PERSONS WHO CAST BALLOTS	25	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

3908-73-R: NURSES' ASSOCIATION OTTAWA GENERAL HOSPITAL (APPLICANT) V. OTTAWA GENERAL HOSPITAL (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		48
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

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4026-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSUMER PRODUCTS SERVICE TECHNICIANS EMPLOYED BY THE RESPONDENT WHO ARE REGULARLY ASSIGNED TO WORK IN AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, SERVICE TRAINING SPECIALISTS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		43
NUMBER OF PERSONS WHO CAST BALLOTS	42	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	35	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	6	

4040-73-R: CLERICAL ASSOCIATION OF LAURENTIAN UNIVERSITY (APPLICANT) V. LAURENTIAN UNIVERSITY OF SUDBURY (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT ADMINISTRATIVE SUPERVISORY STAFF, SECRETARIES TO THE PRESIDENT, SECRETARY TO VICE-PRESIDENT, ACADEMIC, SECRETARY TO VICE-PRESIDENT, ADMINISTRATION, SECRETARY TO COMPTROLLER, SECRETARY TO DIRECTOR OF PUBLIC RELATIONS, SECRETARY TO DIRECTOR OF PHYSICAL PLANT, SECRETARIES TO THE DIRECTOR OF

SERVICES, SECRETARY TO THE CHIEF OF SECURITY, PORTERS, TECHNICAL PERSONNEL, TEACHING STAFF, LIBRARIANS, LIBRARY TECHNICIANS, PERSONS REGULARLY EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING ONTARIO LABOUR RELATIONS BOARD CERTIFICATES." (120 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		100
NUMBER OF PERSONS WHO CAST BALLOTS	98	
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	69	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	26	

4100-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MORTLOCK CONSTRUCTION (1963) LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA - LOCAL UNION NO. 597 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	1	

4159-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SMITH'S DAIRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT AT SMITH'S FALLS, SAVE AND EXCEPT ASSISTANT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT ROUTE SUPERVISOR, OFFICE STAFF, DAIRY BAR EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

(BARGAINING UNITS #1 & #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4223-73-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) V. GREB INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS S PLANT AT 51 ARDELT AVENUE, KITCHENER, SAVE AND EXCEPT LEAD HANDS, PERSONS ABOVE THE RANK OF LEAD HAND, SHOE DESIGNERS, OFFICE, CLERICAL AND SALES STAFF, PERSONS REGULARLY FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (163 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	142
NUMBER OF PERSONS WHO CAST BALLOTS	124
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	73
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	49

4240-73-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. JORDAN WINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL WAREHOUSE EMPLOYEES, CASHIERS, DRIVERS AND RETAIL SALES CLERKS EMPLOYED BY JORDAN WINES LIMITED AND LOCATED AT ITS RETAIL SALES OUTLETS AND WAREHOUSES IN THE PROVINCE OF ONTARIO SAVE AND EXCEPT SUPERVISORS, STORE MANAGERS AND PERSONS ABOVE THE RANK OF SUPERVISOR AND STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND THOSE PERSONS REFERRED TO IN A COLLECTIVE AGREEMENT MADE BETWEEN THE COMPANY AND LOCAL 472, INTERNATIONAL CHEMICAL WORKERS' UNION CONCERNING EMPLOYEES LOCATED AT ST. CATHARINES AND JORDAN WINERIES." (55 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	33
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	10

4327-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NICKEL CENTRE NURSING HOME (RESPONDENT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL

VACATION PERIOD AT GARSON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4436-73-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. NEW ELECTRIC INCORPORATED (RESPONDENT).

UNIT #2: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

1593-71-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280 A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. CEDARBRAE HOTELS AND HOMES LTD., CARRYING ON BUSINESS AS THE THUNDERBIRD MOTOR HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (40 EMPLOYEES).

3244-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. OSF INDUSTRIES LIMITED (RESPONDENT). (2 EMPLOYEES).

3684-73-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL UNION No. 1701 - C.L.C. (APPLICANT) V. CANADIAN UNDERWRITERS' ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (27 EMPLOYEES).

3814-73-R: THE CONSTRUCTION ASSOCIATION OF THUNDER BAY INCORPORATED (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (RESPONDENT). (415 EMPLOYEES).

4092-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

4098-73-R: CANADIAN LABOUR REPRESENTATIVES' UNION (APPLICANT) V. CANADIAN LABOUR CONGRESS (RESPONDENT) V. CANADIAN LABOUR CONGRESS REPRESENTATIVES' UNION (INTERVENER). (4 EMPLOYEES).

4194-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. DOMINION BRONZE LIMITED (RESPONDENT). (2 EMPLOYEES).

4279-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (65 EMPLOYEES).

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4342-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. MARTIN-STEWART CONTRACTING LIMITED (RESPONDENT). (5 EMPLOYEES).

4343-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. VROOM DEVELOPMENT LIMITED (RESPONDENT). (2 EMPLOYEES).

4361-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. LOARING CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

4424-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. R. W. SULLIVAN (RESPONDENT). (2 EMPLOYEES).

4448-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 339 (APPLICANT) V. SWEN BOWMAN ELECTRIC LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (8 EMPLOYEES).

4449-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. A. MARFOGLIA & SONS LTD. (RESPONDENT). (5 EMPLOYEES).

4454-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. LONDON BUILDING PRODUCTS (RESPONDENT). (3 EMPLOYEES).

4459-73-R: C. S. A. O. (Inc.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT). (6 EMPLOYEES).

4464-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CONNOLLY MARBLE, MOSAIC AND TILE COMPANY LIMITED (RESPONDENT). (11 EMPLOYEES).

4507-73-R: LOCAL UNION 2341 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. FRANKLIN ELECTRIC OF CANADA LTD. (RESPONDENT). (141 EMPLOYEES).

4510-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. DEEMAC LTD. (RESPONDENT). (NO EMPLOYEES).

4511-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. L & L INSTALLATIONS LTD. (RESPONDENT). (2 EMPLOYEES).

4520-73-R: LOCAL UNION 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. H. ALLAIRE AND SONS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DANA, MCWILLIAMS, CRERAR, GIBBONS, HUGEL, BADGEROW, FIELD, GRANT, CALDWELL, SPRINGER AND PEDLEY IN THE DISTRICT OF NIPISSING, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-MILE RADIUS OF THE NORTH BAY POST OFFICE AND FURTHER EXCEPTING THOSE PORTIONS OF THE TOWNSHIPS OF DANA, CRERAR, AND HUGEL WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A THIRTY-FIVE RADIUS FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

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4538-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGMILLER LIMITED (RESPONDENT). (8 EMPLOYEES).

4577-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA, LOCAL UNION 674, BRANTFORD, ONTARIO (APPLICANT) V. AL'S MECHANICAL TRADE SERVICE LTD. (RESPONDENT). (3 EMPLOYEES).

4591-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. A. G. SIMPSON COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

4603-73-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. SANDRIN PRECAST LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

4248-73-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SUPERIOR PROPANE LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT AND OUT OF THE TOWN OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (105 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	105
NUMBER OF PERSONS WHO CAST BALLOTS	105
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	27
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	77

4338-73-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CAMPBELL SOUP COMPANY LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE POWER HOUSE OF THE RESPONDENT AT LISTOWEL, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (8 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	8
NUMBER OF PERSONS WHO BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

4363-73-R: LOCAL UNION 278, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL, CIO, CLC (APPLICANT) V. ERIE & HURON BEVERAGES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF CHATHAM, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (28 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	22	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

4384-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v.
PURE METAL TINNING CO. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN
TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (63 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		60
NUMBER OF PERSONS WHO CAST BALLOTS	57	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	40	

4394-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v.
CONNIE STEEL PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT CONCORD, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF, AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN
THE RESPONDENT AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL
AND ORNAMENTAL IRON WORKERS LOCAL 721." (22 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

4429-73-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 478
AFFILIATED WITH A.F.L., C.I.O., C.L.C. (APPLICANT) v. MUSKOKA DISTRICT
HOME FOR THE AGED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN BRACEBRIDGE,
SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF,
UNDERGRADUATE NURSING STAFF, GRADUATE PHARMACISTS, UNDERGRADUATE PHAR-

NACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SECURITY GUARDS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PHYSIOTHERAPISTS AND OCCUPATIONAL THERAPISTS ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE TERM "TECHNICAL PERSONNEL.").

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		70
NUMBER OF PERSONS WHO CAST BALLOTS	67	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42	

4439-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VINCENT STEEL & SERVICE LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	20	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3541-72-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL 1701 (APPLICANT) V. CANADIAN UNDERWRITERS' ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT THE GENERAL MANAGER, THE ONTARIO BRANCH MANAGER, THE SUPERVISOR OF THE SERVICE DEPARTMENT, THE SUPERINTENDENT OF THE SPECIAL RISKS DIVISION THE SUPERINTENDENT OF THE PERSONAL LINES AND PROPERTY DEPARTMENT, THE SUPERINTENDENT OF THE AUTO AND CASUALTY DEPARTMENT, THE COMPTROLLER, ONE SECRETARY EACH TO THE GENERAL MANAGER AND THE ONTARIO BRANCH MANAGER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (126 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		97
NUMBER OF PERSONS WHO CAST BALLOTS		95
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	44	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	48	

3659-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. SMITHS FALLS PUBLIC HOSPITAL (CHAMBERS MEMORIAL) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (104 EMPLOYEE IN THE UNIT). (FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS		75
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	27	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	48	

3682-73-R: ASSOCIATION OF COMMERCIAL AND TECHNICAL EMPLOYEES LOCAL UNION No. 1703 - C.L.C. (APPLICANT) V. UNDERWRITERS' LABORATORIES OF CANADA (RESPONDENT) V. GROUPS OF EMPLOYEES (OBJECTORS).

UNIT #3: "ALL PROFESSIONAL AND GRADUATE ENGINEERS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (NO EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS		8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

(BARGAINING UNITS #1 & #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

3836-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 AFL-CIO-CLC (APPLICANT) V. WINDSOR TELEPHONE ANSWERING SERVICE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13

4122-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. DE LAVAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CONFIDENTIAL SECRETARIES TO THE PRESIDENT AND THE MANUFACTURING MANAGER, THE PERSONNEL DEPARTMENT, SALES STAFF, PURCHASING AGENT, METHODS AND TIME STUDY PERSONS, PLANT NURSE, PROFESSIONAL ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (79 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CLERICAL AND SECRETARIAL STAFF WORKING IN CONJUNCTION WITH SALES STAFF ARE INCLUDED IN THE BARGAINING UNIT, AND FURTHER THAT TOOL DRAFTSMEN ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	71
NUMBER OF PERSONS WHO CAST BALLOTS	70
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	46

4218-73-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. KENTWOOD NURSING HOMES LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL

VACATION PERIOD AT PICTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS COVERED BY A CERTIFICATE OF THIS BOARD DATED AUGUST 10, 1973." (12 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	10
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

4245-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CANADA BUILDING MATERIALS LIMITED (RESPONDENT). (5 EMPLOYEES).

4376-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GLEN LAWRENCE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (35 EMPLOYEES).

4383-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. KNAPP'S CARTAGE AND MOVING (RESPONDENT). (5 EMPLOYEES).

4453-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. MCKAY CARPET MAINTENANCE (RESPONDENT). (6 EMPLOYEES).

4461-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. UNIVERSAL TERMINALS LTD. (RESPONDENT). (20 EMPLOYEES).

4487-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WEST END CHRYSLER LTD. (RESPONDENT). (16 EMPLOYEES).

4488-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DOWNSVIEW CHRYSLER LTD. (RESPONDENT). (13 EMPLOYEES).

4494-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ARGUE FUELS (RESPONDENT). (9 EMPLOYEES).

4539-73-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BRAMALEA GENERAL CONTRACTING LIMITED (RESPONDENT). (3 EMPLOYEES).

4560-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. E & S MARTIN CONSTRUCTION LTD., 3195 ERINDALE STATION RD., MISSISSAUGA, ONTARIO (RESPONDENT). (10 EMPLOYEES).

4563-73-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. HARLEY'S SUPERMARKET 1962 LTD. (RESPONDENT). (20 EMPLOYEES).

4618-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. NEWMARCH MECHANICAL LTD. (RESPONDENT). (9 EMPLOYEES).

4626-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. O. Z. ENTERPRISES (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING OCTOBER

1712-71-R: HILDA WAGNER (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT) V. THE CORPORATION OF THE COUNTY OF LAMBTON (INTERVENER). (85 EMPLOYEES). (DISMISSED).

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3094-72-R: JUDITH MCGOLDRICK AND KATHLEEN DAoust (APPLICANTS) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1423 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE COCHRANE NURSING HOMES LIMITED AT COCHRANE, ONTARIO, INCLUDING THE CHARGE R.N.A.'S AND THE CHARGE N.A.'S, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

19

NUMBER OF PERSONS WHO CAST BALLOTS

19

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT

6

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT

13

4499-73-R: PETER SCHROEDER, GAYLE PILON (APPLICANT) V. RETAIL, WHOLE-SALE AND DEPT. STORE UNION (RESPONDENT) V. FRED HOULE OWNER, HOULE RED & WHITE FOODMASTER (INTERVENER). (6 EMPLOYEES). (GRANTED).

4515-73-R: JANITORS OF LOCAL 254 HOTEL AND RESTAURANT EMPLOYEES, AND INTERNATIONAL BARTENDERS INTERNATIONAL UNION, RESTAURANT AND TAVERN EMPLOYEES UNION (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION LOCAL 254 (RESPONDENT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER). (38 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

OCTOBER

4486-73-U: KROMET HANDLES LIMITED (APPLICANT) V. FRED HART ET AL (RESPONDENTS). (WITHDRAWN).

4531-73-U: CANADIAN VINYL FABRICS, STAUFFER CHEMICAL COMPANY OF CANADA, LIMITED (APPLICANT) V. THE PERSONS NAMED IN SCHEDULES A TO C OF THIS APPLICATION (RESPONDENTS). (WITHDRAWN).

4567-73-U: STRAND MILLWORK LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1450, THOMAS HARKNESS, GARLAND WILSON (RESPONDENTS). (WITHDRAWN).

4605-73-U: MCKINLAY TRANSPORT LIMITED (APPLICANT) V. GEORGE GOW ET AL (RESPONDENTS). (WITHDRAWN).

4608-73-U: MCKINLAY TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

4161-73-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CRANE CARRIER CANADA LTD. (RESPONDENT). (WITHDRAWN).

4431-73-U: HUDSON SPORTSWEAR MANUFACTURING COMPANY LTD. (APPLICANT) V. THE UNITED GARMENT WORKERS OF AMERICA, LOCAL 253 (RESPONDENT). (WITHDRAWN).

4479-73-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORNWALL ELECTRIC (RESPONDENT). (WITHDRAWN).

4525-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 3054 (APPLICANT) V. CENTENNIAL LONDON CABINETS LTD. (RESPONDENTS). (WITHDRAWN).

4543-73-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 167 (APPLICANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT). (WITHDRAWN).

4606-73-U: MCKINLAY TRANSPORT LIMITED (APPLICANT) V. GEORGE GOW ET AL (RESPONDENTS). (WITHDRAWN).

4607-73-U: MCKINLAY TRANSPORT LIMITED (APPLICANT) V. HENRY SCHOENMAKER AND REGINALD OWEN (RESPONDENTS). (WITHDRAWN).

4613-73-U: MCKINLAY TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938 (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

OCTOBER

1475-71-U: DONALD G. GEBBIE AND J. MICHAEL LONGMOORE (COMPLAINANTS) V. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 200; FORD MOTOR COMPANY OF CANADA, LIMITED (RESPONDENTS). (DISMISSED).

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3636-73-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ACME SEELEY LIMITED (RESPONDENT). (WITHDRAWN).

3637-73-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ACME SEELEY LIMITED (RESPONDENT). (WITHDRAWN).

3927-73-U: BRYAN J. LUNT (COMPLAINANT) V. TEAMSTERS LOCAL 647, MILK & BREAD DRIVERS & DAIRY EMPLOYEES (RESPONDENT). (DISMISSED).

4060-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. CORDS (CANADA) LTD. (RESPONDENT). (WITHDRAWN).

4103-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. CORDS CANADA LTD. (RESPONDENT). (WITHDRAWN).

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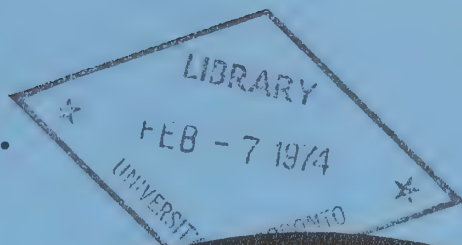
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ON TEMPORARY EMPLOYEES OTHERWISE SUBSTITUTING FOR PERMANENT
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EMPLOYED IN THE VOTING CONSTITUENCY ON THE TERMINAL DATE -
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M & G EXCAVATING & DEMOLITION (LONDON) LTD. v. TEAMSTERS LOCAL
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INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCALS 72, 192 AND 199 v. ROBES ROYALE LIMITED v. SHAKER MANUFACTURING COMPANY LIMITED.....

600

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LIONEL ERNEST ROGERSON v. FRANCON, DIVISION OF CANFARGE LTD., AND TEAMSTERS LOCAL UNION NO. 230.....

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TERMINATION - FRAUD - S50 - EFFECT OF ALLEGING A MEMBER - EMPLOYEE IS MANAGERIAL - EFFECT OF PERVERSE APPLICATION OF ALLEGATION OF FRAUD TO THE CIRCUMSTANCES OF THE CASE.

CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC v. DARRIGO'S FOOD MARKETS ONT. LIMITED v. GROUP OF EMPLOYEES AND CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC v. DARRIGO'S FOOD MARKETS ONT. LIMITED v. GROUP OF EMPLOYEES.....

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YVON COTÉ ON BEHALF OF A GROUP OF EMPLOYEES v. INTERNATIONAL WOODWORKERS OF AMERICA v. CHAPLEAU LUMBER CO. LTD.....

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TERMINATION - SALE OF A BUSINESS - S55(5) - WHETHER "A CHANGE IN CHARACTER" OF THE BUSINESS - EFFECT OF BOTH PREDECESSOR AND SUCCESSOR EMPLOYERS BEING ENGAGED IN THE MANUFACTURE OF WOMAN'S APPAREL - WHETHER BARGAINING RIGHTS TO BE TERMINATED - S55(2) - WHETHER THE SUCCESSOR IS BOUND BY A COLLECTIVE AGREEMENT.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCALS 72, 192 AND 199 v. ROBES ROYALE LIMITED v. SHAKER MANUFACTURING COMPANY LIMITED.....

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TERMINATION - S49(3) - EFFECT OF AN ATTEMPT TO DISAFFILIATE RELATIONSHIP WITH A PARENT INTERNATIONAL THROUGH AN APPLICATION TO TERMINATE BARGAINING RIGHTS - EFFECT OF PREAMBLE FAILING TO RELATE TO THE LOCAL TRADE UNION PARTY HOLDING BARGAINING RIGHTS FOR THE AFFECTED EMPLOYEES - WHETHER THE APPLICATION IS PERVERSE.

PATRICK MCKEON AND OTHERS EMPLOYEES OF HIRAM WALKER & SONS LIMITED v. THE DISTILLERY WORKERS' UNION LOCAL 61, WALKERVILLE, ONTARIO, AFFILIATED WITH THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFFILIATED WITH THE AFL-CIO, CLC-OFL.....

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TRADE UNION - EVIDENCE - EFFECT OF BRINGING INTO ISSUE THE AUTHORITY OF AND COMPETENCE OF INDIVIDUALS TO REPRESENTS A TRADE UNION - WHETHER THE ONUS OF PROOF IS ON THE PARTY DENYING SUCH AUTHORITY AND COMPETENCE - S47 OF THE BOARD'S RULES - WHETHER ALLEGATIONS WITH RESPECT TO AUTHORITY AND COMPETENCE FALL WITHIN THE MEANING OF THE BOARD'S RULES REGARDING PARTICULARITY.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. A. V. HALLAM LTD. v. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION v. INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, LOCAL UNION 1891 v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.....

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7. THE PARTIES AGREE THAT ON THE DATE OF THE MAKING OF THIS APPLICATION THERE WERE TWO EMPLOYEES IN THE APPLICANT'S PROPOSED BARGAINING UNIT AND SIX EMPLOYEES IN THE RESPONDENT'S PROPOSED BARGAINING UNIT. RIVER VALLEY, STURGEON FALLS AND CACHE BAY ARE NOT INCLUDED IN ANY OF THE BOARD'S REGULAR GEOGRAPHIC AREAS. HOWEVER, IN THE PAST THE BOARD HAS ISSUED CERTIFICATES WITH REFERENCE TO SEPARATE JOB SITES IN RIVER VALLEY AND STURGEON FALLS. IN THE FORMER SITUATION, THE BOARD DETERMINED THAT THE GEOGRAPHIC AREA TO BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT WAS THE TOWNSHIPS OF DANA, McWILLIAMS, CRERAR, GIBBONS, HUGEL AND BADGEROW IN THE DISTRICT OF NIPISSING. SEE, FOR EXAMPLE, THE WINSON CONSTRUCTION LTD. CASE, BOARD FILE 3920-73-R. IN THE LATTER SITUATION, THE BOARD DETERMINED THAT THE GEOGRAPHIC AREA TO BE INCLUDED IN THE APPROPRIATE BARGAINING UNIT WAS THE TOWNSHIPS OF SPRINGER, CALDWELL, BADGEROW, FIELD, GRANT AND PEDLEY, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE. SEE, FOR EXAMPLE, THE FARQUHAR CONSTRUCTION LIMITED CASE, BOARD FILE 14922-68-R.

8. HOWEVER, THE GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN WERE DETERMINED IN THE CIRCUMSTANCES OF THE APPLICATION AND AS AN INTERIM MEASURE. ACCORDINGLY, SUCH GEOGRAPHIC AREAS MAY NOT BE RELIED UPON AS INDICATING THE FINAL VIEWS OF THE BOARD OR AS BEING OF GENERAL APPLICATION IN ALL CIRCUMSTANCES. IN OUR VIEW, THE FACT THAT THE GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN WERE DETERMINED IN THE CIRCUMSTANCES OF THE APPLICATION AND AS AN INTERIM MEASURE IS IN ITSELF AN INDICATION TO THE PARTIES THAT EACH APPLICATION, PAST AND PRESENT, IS TO BE DETERMINED IN THE LIGHT OF THE CIRCUMSTANCES OF EACH APPLICATION.

9. THE RADIUS OF 25 MILES FROM STURGEON FALLS PROPOSED BY THE RESPONDENT IS UNSATISFACTORY FOR TWO REASONS. FIRSTLY, THE BOARD HAS STATED ON SEVERAL OCCASIONS THAT IT DOES NOT REGARD GEOGRAPHIC AREAS DEFINED IN TERMS OF A RADIUS AS BEING SATISFACTORY. SUCH DESCRIPTIONS FREQUENTLY MAKE IT DIFFICULT TO DETERMINE WHETHER A GIVEN JOB SITE FALLS WITH OR WITHOUT THE BOUNDARY OF THE RADIUS. SECONDLY, THE RADIUS OF 25 MILES FROM STURGEON FALLS OVERLAPS THE BOARD'S REGULAR GEOGRAPHIC AREAS, NUMBERS 16 AND 17. WE NOTE THAT THERE IS ALSO AN OVERLAP (THE TOWNSHIP OF BADGEROW) BETWEEN THE TWO GEOGRAPHIC AREAS REFERRED TO IN PARAGRAPH SEVEN.

10. IN THE CIRCUMSTANCES OF THIS APPLICATION AND AS AN INTERIM MEASURE WE FURTHER FIND THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DANA, McWILLIAMS, CRERAR, GIBBONS, HUGEL, BADGEROW, FIELD, GRANT CALDWELL, SPRINGER AND PEDLEY IN THE DISTRICT OF NIPISSING, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-MILE RADIUS OF THE NORTH BAY POST OFFICE AND FURTHER EXCEPTING THOSE PORTIONS OF THE TOWNSHIPS OF DANA, CRERAR, AND HUGEL WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A THIRTY-FIVE

MILE RADIUS FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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12. IN THE RESULT, THIS APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: OCTOBER 26, 1973.

I DISSENT. HAVING GRANTED THE AREA REQUESTED BY THE APPLICANT ON PREVIOUS OCCASIONS, I WOULD HAVE GRANTED A CERTIFICATE TO THE APPLICANT FOR THE BARGAINING UNIT IT SEEKS.

4075-73-U: LIONEL ERNEST ROGERSON (COMPLAINANT) v. FRANCON, DIVISION OF CANFARGE LTD., AND TEAMSTERS LOCAL UNION NO. 230 (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND W.H. WIGHTMAN.

APPEARANCES AT THE HEARING: W.G.D. MCCARTHY FOR THE COMPLAINANT; RAYMOND LACHAPELLE, Q.C. FOR FRANCON, DIVISION OF CANFARGE LTD.; HAROLD F. CALEY AND BRUNO TEICHMANN FOR TEAMSTERS LOCAL UNION NO. 230.

DECISION OF THE BOARD:

NOVEMBER 1, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT ALLEGING THAT THE UNION HAS DEALT WITH THE COMPLAINANT IN A MANNER THAT IS CONTRARY TO SECTION 60 OF THE ACT.

2. THE EVIDENCE INDICATES THAT THE GRIEVOR WAS DISCHARGED BY THE COMPANY AND THAT THE UNION TOOK STEPS TO HAVE HIM REINSTATED. AFTER THE FIRST GRIEVANCE MEETING WITH MANAGEMENT IN WHICH THE UNION WAS UN-SUCCESSFUL IN HAVING THE GRIEVOR REINSTATED, THE GRIEVOR COMMENCED PICKETING AT THE COMPANY'S PREMISES.

3. ON AN EARLIER OCCASION SIMILAR CONDUCT HAD OCCURRED. AS A RESULT OF HIS PICKETING THE GRIEVOR HAD BEEN SUSPENDED. ALTHOUGH THE UNION WAS SUCCESSFUL WITH RESPECT TO THE GRIEVANCE WHICH GAVE RISE TO THE INCIDENT IT DID NOT PROCEED TO HAVE THE SUSPENSION FOR PICKETING SET ASIDE. IN SO DOING THE UNION HAD RELIED ON AN OPINION LETTER FROM ITS COUNSEL.

4. WITH RESPECT TO THE INCIDENT THAT GAVE RISE TO THIS APPLICATION ALTHOUGH THE UNION FILED A GRIEVANCE IT WAS FORCED TO CONSIDER THE GRIEVOR'S CONDUCT IN PICKETING THE PREMISES, NOTWITHSTANDING THAT THE GRIEVANCE PROCEDURE HAD NOT BEEN EXHAUSTED. THE UNION PRESIDENT AND MEMBERS OF THE EXECUTIVE CONSIDERED THE GRIEVANCE AND THE PREVIOUS ACTION WHERE MR. ROGERSON HAD RECEIVED A SUSPENSION FOR PICKETING AND

THEY ALSO CONSIDERED THE OPINION LETTER FROM THEIR COUNSEL CONCERNING THE EARLIER INCIDENT, AND CONCLUDED THAT IN ALL THE CIRCUMSTANCES MR. ROGERSON WOULD NOT LIKELY BE REINSTATED BECAUSE OF HIS CONDUCT IN PICKETING THE EMPLOYER'S PREMISES. THEY THEREFORE DID NOT PROCEED TO ARBITRATION.

5. COUNSEL FOR THE COMPLAINANT ALLEGES THAT THE UNION'S CONDUCT IN NOT PROCEEDING TO ARBITRATION WAS ARBITRARY. HE DOES NOT ARGUE THAT THE UNION ACTED EITHER IN BAD FAITH OR IN A DISCRIMINATORY FASHION. IT IS OUR VIEW THAT THERE IS NO ABSOLUTE RIGHT IN A MEMBER OF THE BARGAINING UNIT TO HAVE HIS GRIEVANCE ARBITRATED. THE UNION IS REQUIRED TO CONSIDER THE MATTER AND TO WEIGH ALL THE RELEVANT FACTORS. IN THIS CASE THE UNION EXECUTIVE CONSIDERED THE MATTER AND BASED UPON ITS UNDERSTANDING OF THE EXISTING FACTS AND THE GRIEVOR'S EARLIER CONDUCT, IT CONCLUDED THAT THE GRIEVOR'S DAYS WITH THE RESPONDENT EMPLOYER WERE NUMBERED. IT THOSE CIRCUMSTANCES IT DECIDED NOT TO PROCEED TO ARBITRATION. IN OUR VIEW THE UNION HAS DONE ALL THAT IT WAS REQUIRED TO DO WITHIN THE MEANING OF SECTION 60 OF THE LABOUR RELATIONS ACT. IT DID NOT ACT IN AN ARBITRARY FASHION BECAUSE IT CONSIDERED THE GRIEVOR'S POSITION IN THE LIGHT OF ALL RELEVANT FACTORS INCLUDING THE RESULT OF THE EARLIER INCIDENT AND COUNSEL'S OPINION AT THAT TIME. IT PUT ITS MIND TO ALL THE CIRCUMSTANCES AND CONCLUDED THAT THE GRIEVOR WOULD BE FACED WITH TERMINATION OF HIS EMPLOYMENT. THE UNION THEN DECIDED NOT TO PROCEED. THE ISSUE IS NOT WHETHER THE UNION WAS RIGHT OR WRONG IN ITS ASSESSMENT, BUT WHETHER THE UNION CONSIDERED THE MATTER FULLY AND ARRIVED AT A DECISION AFTER DUE CONSIDERATION. IN OUR VIEW THE CONSIDERATION GIVEN TO THE CIRCUMSTANCES OF THIS CASE BY THE UNION NEGATES ANY CONSIDERATION OF ARBITRARY CONDUCT WITHIN THE MEANING OF SECTION 60 OF THE ACT AND THE COMPLAINT IS THEREFORE DISMISSED.

4343-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. VROOM DEVELOPMENTS (CENTRAL) LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD: NOVEMBER 2, 1973.

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2. THIS APPLICATION FOR CERTIFICATION WAS FILED ON SEPTEMBER 4, 1973 AND THE TERMINAL DATE OF THIS APPLICATION WAS FIXED AS SEPTEMBER 14, 1973.

3. THE BOARD DID NOT RECEIVE ANY INDICATION THAT FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, HAD BEEN POSTED BY THE RESPONDENT. ACCORDINGLY, ON SEPTEMBER 13, 1973, THE BOARD EXTENDED THE TERMINAL DATE OF THIS APPLICATION TO SEPTEMBER 20, 1973, AND SERVED THE TWO EMPLOYEES, WHO WERE APPARENTLY AFFECTED BY

THIS APPLICATION, WITH FORM 52 BY REGISTERED MAIL. AT THAT TIME, THE BOARD HAD BEEN UNABLE TO OBTAIN ANY INFORMATION FROM THE RESPONDENT CONCERNING THE NAMES AND ADDRESSES OF EMPLOYEES AFFECTED BY THIS APPLICATION. HOWEVER, THE BOARD SUCCEEDED IN OBTAINING THE NAMES AND ADDRESSES OF THESE TWO EMPLOYEES FROM THE APPLICANT.

4. ON SEPTEMBER 17, 1973, THE BOARD RECEIVED THE RESPONDENT'S REPLY TO THIS APPLICATION FOR CERTIFICATION, TOGETHER WITH A LIST OF EMPLOYEES CONTAINING TWO NAMES AND THE SPECIMEN SIGNATURES OF FOUR PERSONS. HOWEVER, THERE WAS NOTHING BEFORE THE BOARD TO INDICATE THAT THE TWO PERSONS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT HAD RECEIVED NOTICE OF THIS APPLICATION. THE BOARD THEREFORE, ONCE AGAIN, EXTENDED THE TERMINAL DATE OF THIS APPLICATION TO OCTOBER 2, 1973 AND SERVED FORM 52 BY REGISTERED MAIL ON THE FOUR PERSONS WHOSE ADDRESSES HAD BEEN PROVIDED BY THE RESPONDENT.

5. IN A LETTER TO THE BOARD RECEIVED ON OCTOBER 1, 1973, THE RESPONDENT HAS STATED THAT IT IS "SURPRISED AND MYSTIFIED" BY THE DECISION OF THE BOARD TO EXTEND THE TERMINAL DATE. THE RESPONDENT ALSO STATED THAT BEFORE THE BOARD CHANGES THE TERMINAL DATE, IT SHOULD DO SO ONLY AFTER GIVING THE PARTIES NOTICE OF THIS POSSIBILITY AND AN OPPORTUNITY TO MAKE SUBMISSIONS.

6. THE BOARD FOUND IT NECESSARY TO EXTEND THE TERMINAL DATE IN THIS APPLICATION IN ORDER TO SATISFY ITSELF THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION HAD RECEIVED NOTICE THEREOF. THE BOARD NOTES THAT THIS WAS DUE TO THE FAILURE OR INABILITY OF THE RESPONDENT TO RESPOND TO THE DIRECTIONS OF THE REGISTRAR AND POST FORM 52 IN SUCH A MANNER THAT IT WOULD COME TO THE ATTENTION OF THE EMPLOYEES AFFECTED BY THIS APPLICATION. THERE HAS BEEN A CONSIDERABLE DELAY IN THE DISPOSITION OF THIS APPLICATION. SUCH DELAY HAS APPARENTLY NOT BEEN OCCASIONED BY EITHER THE APPLICANT OR THE BOARD.

7. THE RESPONDENT'S SUBMISSION THAT IT BE CONSULTED BEFORE A TERMINAL DATE IS EXTENDED WOULD, OF COURSE, CAUSE STILL FURTHER DELAY IN THE DISPOSITION OF THIS APPLICATION AND PLACE A PREMIUM ON NON-COMPLIANCE WITH THE DIRECTIONS OF THE REGISTRAR. THE BOARD IS CONCERNED WITH EXPEDITING PROCEEDINGS BEFORE IT AND WITH GIVING ADEQUATE NOTICE OF A PROCEEDING TO ALL PERSONS AFFECTED BY SUCH PROCEEDING. THE BOARD HAS ENDEAVOURED TO GIVE SUCH NOTICE DESPITE THE FOREGOING DELAYS.

8. IN A LETTER RECEIVED BY THE BOARD ON OCTOBER 9, 1973, THE APPLICANT REQUESTED LEAVE TO WITHDRAW THIS APPLICATION FOR CERTIFICATION AND INFORMED THE BOARD THAT A COLLECTIVE AGREEMENT HAD BEEN SIGNED WITH THE RESPONDENT. IN A DECISION DATED OCTOBER 9, 1973, THE BOARD TERMINATED THIS PROCEEDING.

9. IN A LETTER RECEIVED BY THE BOARD ON OCTOBER 17, 1973, THE APPLICANT ADVISED THE BOARD THAT THE RESPONDENT HAD INFORMED THE APPLICANT THAT NEITHER THE PERSON WHO SIGNED THE PURPORTED COLLECTIVE AGREEMENT

NOR ANY OTHER EMPLOYEE HAD THE AUTHORITY TO SIGN ON BEHALF OF THE RESPONDENT AND THAT THE RESPONDENT HAD DECLARED THAT IT WOULD NOT BE BOUND BY THE AGREEMENT. IN THESE CIRCUMSTANCES, THE APPLICANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 9, 1973, THE PROCEED TO A HEARING ON THIS MATTER.

10. THE BOARD NOTES THAT THE APPLICANT IS NOT ALLEGING THAT THERE IS NOW A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WHICH COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION. THE BOARD ALSO NOTES THAT THE RESPONDENT HAS INFORMED THE BOARD THAT IT HAS NO OBJECTION TO THE APPLICANT'S REQUEST THAT THE BOARD RECONSIDER ITS DECISION OF OCTOBER 9, 1973, AND PROCEED WITH ITS CONSIDERATION OF THIS APPLICATION IN THE ORDINARY FASHION.

11. IN THESE CIRCUMSTANCES, THE BOARD REVOKES ITS DECISION IN THIS MATTER DATED OCTOBER 9, 1973.

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4444-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALWELL FORMING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: R. KOSKIE AND MICHAEL J. REILLY FOR THE APPLICANT; R.B. LIVINGSTONE FOR THE RESPONDENT; JOSE SILVEIRA FOR THE OBJECTORS; T. NEIL FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

DECISION OF THE BOARD: NOVEMBER 5, 1973.

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2. THIS MATTER WAS SCHEDULED FOR HEARING ON OCTOBER 22, 1973, TO DEAL WITH CERTAIN MATTERS RAISED BY THE BOARD'S DECISION OF OCTOBER 1, 1973. AT THAT HEARING, HOWEVER, THE BOARD ALSO DEALT WITH A MATTER RAISED BY AN EMPLOYEE WHO FILED A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IN OPPOSITION TO THIS APPLICATION. THE TERMINAL DATE SET FOR THIS APPLICATION WAS SEPTEMBER 28, 1973. ON OCTOBER 9, 1973, THE REGISTRAR IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE RETURNED TO THIS EMPLOYEE A PETITION WHICH WAS MAILED REGISTERED ON OCTOBER 6, 1973, BECAUSE THAT PETITION WAS FILED AFTER THE TERMINAL DATE. SUBSEQUENTLY, ON OCTOBER 12, 1973, THE EMPLOYEE RESUBMITTED THE PETITION TOGETHER WITH A COVERING LETTER WHICH READS IN PART:

"IN REPLY TO YOUR LETTER DATED OCT. 9-73,
I AM A BIT SURPRISED TO SEE MY HAND-WRITTEN
STATEMENT BACK. I CANNOT SEE HOW I COULD

HAVE THE STATEMENT MAILED TO BY SEPTEMBER 28-73, IF I ONLY SAW THE POSTERS ON THE SITE JUST A DAY BEFORE THE FIXED DATE?"

ACCORDINGLY, THE BOARD DEALT WITH THE QUESTION AS TO WHETHER ADEQUATE NOTICE OF THIS APPLICATION WAS GIVEN TO THE EMPLOYEES.

3. THE BOARD HEARD THE EVIDENCE OF THE EMPLOYEE OBJECTING TO THE APPLICATION AND FROM VARIOUS WITNESSES TESTIFYING ON BEHALF OF THE RESPONDENT IN CONNECTION WITH THE POSTING OF THE NOTICES TO THE EMPLOYEES. THE EVIDENCE HEARD BY THE BOARD WAS EXTREMELY UNSATISFACTORY AND WE HAVE GREAT DIFFICULTY IN RECONCILING THE VARIOUS STATEMENTS MADE BY THE VARIOUS WITNESSES. FORTUNATELY, HOWEVER, IT IS NOT NECESSARY FOR US TO DEAL WITH THIS EVIDENCE IN ANY DETAIL. FROM THE EVIDENCE WHICH THE BOARD HEARD WE ARE NOT SATISFIED THAT SUFFICIENT NOTICES WERE POSTED ON ALL THE JOB SITES AT A TIME SUFFICIENTLY PRIOR TO THE TERMINAL DATE TO GIVE THE EMPLOYEES AFFECTED BY THIS APPLICATION REASONABLE NOTICE OF THE APPLICATION BEFORE THE TERMINAL DATE.

4. BEFORE MAKING ANY ORDER IN THIS REGARD WE FEEL THAT IT IS NECESSARY TO COMMENT ON AN ARGUMENT PRESENTED TO THE BOARD BY THE SOLICITOR FOR THE APPLICANT. HE ARGUED THAT THE ONUS IN THE PRESENT SITUATION IS ON THE EMPLOYEE TO PROVE A CASE THAT THE EMPLOYEE DID NOT HAVE REASONABLE NOTICE OF THE APPLICATION, AND THAT THIS ONUS CANNOT BE SATISFIED BY THE EVIDENCE PRESENTED ON BEHALF OF THE RESPONDENT EMPLOYER. WE ARE OF THE VIEW THAT THIS PROBLEM SHOULD NOT BE FRAMED IN SUCH AN ADVERSARIAL MANNER. THIS IS A MATTER WHERE THE BOARD MUST BE SATISFIED THAT ITS OWN RULES OF PROCEDURE HAVE BEEN COMPLIED WITH AND SHOULD NOT BE VIEWED AS A SITUATION WHERE A PERSON BENEFITS FROM AN ATTEMPT, INTENTIONAL OR OTHERWISE, TO FRUSTRATE BOARD PROCEEDINGS AS REQUIRED BY THE BOARD'S RULES OF PROCEDURE OR THE BOARD'S RESPONSIBILITIES UNDER THE STATUTORY POWERS PROCEDURE ACT. WE WOULD, HOWEVER, LIKE TO MAKE IT CLEAR THAT THE BOARD'S FINDING WITH RESPECT TO NOTICE OF THE APPLICATION MUST NOT BE CONSTRUED AS CONDONING THE CONDUCT OF THE EMPLOYER AND HIS REPRESENTATIVES IN THE PRESENT CASE.

5. SINCE THE BOARD HAS RECEIVED A STATEMENT OF DESIRE IN THE PRESENT CASE WE ARE SATISFIED THAT THE DEFECT IN THE NOTICE TO THE EMPLOYEES CAN BE CURED BY EXTENDING THE TERMINAL DATE IN THE PRESENT CASE TO OCTOBER 6, 1973, THE DAY ON WHICH THE STATEMENT OF DESIRE WAS SENT BY REGISTERED MAIL TO THE BOARD. BY EXTENDING THE TERMINAL DATE IN THIS MANNER THE BOARD WILL ALLOW THE EXISTING STATEMENT OF DESIRE TO BE ACCEPTED IN ACCORDANCE WITH SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. IT SHOULD BE NOTED, HOWEVER, THAT THE BOARD WILL STILL REQUIRE THE EMPLOYEE FILING THIS STATEMENT TO GIVE EVIDENCE AT A SUBSEQUENT HEARING BY THE BOARD AS TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THIS STATEMENT OF DESIRE.

4458-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. NORTHERN STAG INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: NOVEMBER 6, 1973.

1. AT THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER, MRS. MARJORIE McEWEN CAST A SEGREGATED BALLOT. SINCE IT APPEARS THAT MRS. McEWEN WAS ABSENT FROM WORK ON OCTOBER 3, 1973, THE TERMINAL DATE IN THIS MATTER, AND HAD NOT WORKED FOR THE RESPONDENT SINCE AUGUST 8, 1973, THE BOARD FINDS, IN ACCORDANCE WITH ITS USUAL PRACTICE, THAT MRS. McEWEN WAS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY ON OCTOBER 3, 1973 AND WAS THEREFORE NOT ELIGIBLE TO VOTE AT THE PRE-HEARING REPRESENTATION VOTE.

2. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE TO BE COUNTED AND REPORT TO THE BOARD.

3702-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) v. GIGNAC, SUTTS, NOSANCHUK (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: NOVEMBER 6, 1973.

1. BY LETTER DATED SEPTEMBER 6, 1973, THE RESPONDENT ADVISED THE BOARD THAT IT WAIVED ITS REQUEST FOR THE EXCLUSION FROM THE BARGAINING UNIT OF THE BOOKKEEPER AND TITLE SEARCHER. IT THUS BECOMES UNNECESSARY FOR THE EXAMINER TO CONDUCT AN INVESTIGATION INTO THOSE CLASSIFICATIONS AND THEY WILL BE INCLUDED IN THE BARGAINING UNIT.

2. THERE WAS FILED IN OPPOSITION TO THE APPLICATION A STATEMENT OF OBJECTION OR PETITION IN OPPOSITION TO THE APPLICATION. THE BOARD HEARD SOME EVIDENCE WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE PETITION WAS CIRCULATED.

3. DURING THE COURSE OF CROSS-EXAMINATION OF BERNHARDT, THE WITNESS CALLED IN SUPPORT OF THE PETITION, THE APPLICANT ATTEMPTED TO ELICIT INFORMATION WITH RESPECT TO A MEETING SAID TO HAVE BEEN HELD IN THE OFFICE OF MR. SUTTS, ONE OF THE RESPONDENT EMPLOYERS. THE WITNESS REFERRED TO A MEETING HELD BY SUTTS WITH EMPLOYEES WHICH THE WITNESS HAD ATTENDED. THE WITNESS STATED THAT SUTTS WAS EXPLAINING TO THE EMPLOYEES WHAT HAD HAPPENED AT A MEETING THE NIGHT BEFORE BETWEEN THE EMPLOYER AND THE EMPLOYEES WHICH SHE HAD NOT ATTENDED.

4. COUNSEL FOR THE RESPONDENT OBJECTED TO THIS LINE OF CROSS-EXAMINATION ON THE GROUND THAT IT DEALT WITH THE SUBJECT MATTER OF CERTAIN CHARGES MADE BY THE APPLICANT WHICH HAD NOT BEEN DEALT WITH AT THAT POINT IN THE PROCEEDINGS.

5. THE REPRESENTATIVE OF THE APPLICANT YIELDED TO THE OBJECTION. HE WAS ADVISED BY THE BOARD, HOWEVER, THAT HE WAS ENTITLED TO CROSS-EXAMINE WITH RELATION TO THE PETITION AND THAT IF THE CHARGES WERE HEARD, HE WOULD HAVE A FURTHER OPPORTUNITY TO CROSS-EXAMINE THE WITNESS. HE MADE NO FURTHER ATTEMPT TO CROSS-EXAMINE AT THAT POINT. THE HEARING WAS ADJOURNED, THE BOARD RESERVING ITS DECISION WITH RESPECT TO THE CHARGES. THESE CHARGES WERE SUBSEQUENTLY DISMISSED FOR REASONS SET OUT IN THE DECISION OF THE BOARD DATED AUGUST 17, 1973 AND, OF COURSE, THE APPLICANT HAD IN FACT NO FURTHER OPPORTUNITY TO CROSS-EXAMINE.

6. THE BOARD HAS MADE NO DECISION WITH RESPECT TO THE WEIGHT TO BE GIVEN TO THE PETITION, THE INVESTIGATION INTO THE ORIGINATION OF WHICH IS, PROCEDURALLY, ONE FOR CARRIAGE BY THE BOARD. IN THE CIRCUMSTANCES OF THE PRESENT CASE, THE BOARD IS OF THE OPINION THAT IT OUGHT TO COMPLETE ITS INQUIRY INTO THE ORIGINATION OF THE PETITION IN VIEW OF THE DOUBTS AROUSED BY THE REFERENCES TO EMPLOYER-EMPLOYEE MEETINGS BROUGHT OUT IN CROSS-EXAMINATION. THE BOARD IS OF THE OPINION THAT THE RESPONDENT, THE APPLICANT AND THE PETITIONERS OUGHT TO BE AFFORDED THE OPPORTUNITY TO REPLY TO THIS EVIDENCE (IF THEY ARE SO ADVISED) BEFORE THE BOARD FINALLY DISPOSES OF THE MATTER.

7. FURTHERMORE, HAVING IN MIND THE PROVISIONS OF SECTION 10(c) OF THE STATUTORY POWERS PROCEDURE ACT 1971, WHICH READ AS FOLLOWS:

10. A PARTY TO PROCEEDINGS MAY AT A HEARING,

(c) CONDUCT CROSS-EXAMINATION OF WITNESSES
AT A HEARING REASONABLY REQUIRED FOR A
FULL AND FAIR DISCLOSURE OF THE FACTS
IN RELATION TO WHICH THEY HAVE GIVEN
EVIDENCE.

THE BOARD IS OF THE OPINION THAT THE APPLICANT MUST BE ALLOWED TO COMPLETE CROSS-EXAMINATION OF THE WITNESS WITH RESPECT TO THE ORIGINATION OF THE PETITION NOTWITHSTANDING THE FACT THAT EVIDENCE ELICITED MAY ALSO HAVE REFERENCE TO INCIDENTS IN THE CHARGES WHICH REMAIN, OF COURSE, DISMISSED. THE DIRECTION IS MADE HAVING IN MIND THE POWERS ACCORDED TO THE BOARD UNDER THE PROVISIONS OF SECTION 95(1) OF THE ACT.

8. THE REGISTRAR IS THEREFORE DIRECTED TO SET THE MATTER DOWN FOR CONTINUATION OF HEARING IN ORDER TO PERMIT FULL INQUIRY INTO THE ORIGINATION OF THE STATEMENT OF OBJECTION OR PETITION FILED IN OPPOSITION TO THE APPLICATION.

1789-71-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER #1) v. THE OIL CHEMICAL & ATOMIC WORKERS' INTERNATIONAL UNION (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S. T. GOUDGE AND DOUG CONROY FOR THE APPLICANT; F. G. HAMILTON AND R. J. BELTON FOR THE RESPONDENT; T. E. ARMSTRONG AND R. RICHARDSON FOR INTERVENER #1; NO ONE FOR INTERVENER #2.

DECISION OF THE BOARD: NOVEMBER 6, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN A PRE-HEARING REPRESENTATION VOTE WAS DIRECTED AND THE BALLOT BOX WAS SEALED PENDING A DECISION BY THE BOARD ON THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS MATTER. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS AUXILIARY STEAM PLANT AT DOUGLAS POINT, SAVE AND EXCEPT CHIEF ENGINEER. THE UNIT THAT THE APPLICANT SEEKS TO REPRESENT IS DESCRIBED IN TERMS OF THE APPLICANT'S USUAL CRAFT BARGAINING UNIT.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 8, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE AUXILIARY STEAM PLANT AT DOUGLAS POINT IS PART OF AN INTEGRATED COMPLEX WHICH INCLUDES THE DOUGLAS POINT NUCLEAR GENERATING STATION, THE AUXILIARY STEAM PLANT, AN EMERGENCY BOILER AND THE BRUCE HEAVY WATER PLANT. ALL OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE REPRESENTED BY CANADIAN UNION OF PUBLIC EMPLOYEES ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 AS PART OF AN ONTARIO-WIDE BARGAINING UNIT. IN ADDITION TO THE ELECTRICAL POWER WHICH IS GENERATED BY THE DOUGLAS POINT NUCLEAR GENERATING STATION, THE DOUGLAS POINT NUCLEAR GENERATING STATION ALSO IS A SOURCE OF HIGH PRESSURE STEAM WHICH IS USED IN THE PRODUCTION OF HEAVY WATER AT THE BRUCE HEAVY WATER PLANT. THE AUXILIARY STEAM PLANT IS ANOTHER SOURCE OF HIGH PRESSURE STEAM FOR THE BRUCE HEAVY WATER PLANT. THE EMERGENCY BOILER IS A SMALL MEDIUM PRESSURE STEAM GENERATOR WHICH IS AVAILABLE IN THE EVENT THAT THE OTHER HIGH PRESSURE STEAM SOURCES ARE NOT FUNCTIONING. THE EMERGENCY BOILER IS ONLY REQUIRED TO PREVENT DAMAGE TO THE BRUCE HEAVY WATER PLANT SHOULD THE HIGH PRESSURE STEAM SOURCES FAIL.

3. THE BRUCE HEAVY WATER PLANT DETERMINES THE STEAM REQUIREMENTS AND THE AUXILIARY STEAM PLANT OPERATORS ARE RESPONSIBLE TO MEET THESE REQUIREMENTS. IN ADDITION TO THE STATIONARY ENGINEERS WHO OPERATE THE AUXILIARY STEAM PLANT, THERE ARE SIX MECHANICAL MAINTAINERS WHO WORK AT THE AUXILIARY STEAM PLANT WITH THE STATIONARY ENGINEERS. THE MECHANICAL MAINTAINERS ARE INTERCHANGED WITH OTHER MECHANICAL MAIN-

TAINERS AT THE HEAVY WATER PLANT. IN ADDITION, THERE ARE FIVE CONTROL TECHNICIANS ASSIGNED FROM THE BRUCE HEAVY WATER PLANT TO THE AUXILIARY STEAM PLANT. FROM TIME TO TIME, BUILDING MECHANICS SUCH AS PAINTERS, CARPENTERS, ETC., ARE ASSIGNED TO WORK AT THE AUXILIARY STEAM PLANT. HANDYMEN PERFORM JANITORIAL WORK AT THE AUXILIARY STEAM PLANT ON A DAILY BASIS. FINALLY, WHEN HEAVY EQUIPMENT IS REQUIRED TO BE MOVED, WORK EQUIPMENT OPERATORS ARE TRANSFERRED TO THE AUXILIARY STEAM PLANT FROM AREAS OUTSIDE THE AUXILIARY STEAM PLANT. EMPLOYEES IN THE AUXILIARY STEAM PLANT MAY EXERCISE THEIR SENIORITY WITHIN THE BARGAINING UNIT REPRESENTED BY LOCAL 1000 AND TRANSFER OUTSIDE OF THE AUXILIARY STEAM PLANT WHEN PROMOTIONAL OPPORTUNITIES OCCUR.

4. THE EVIDENCE FURTHER DISCLOSED THAT OTHER EMPLOYEES, PARTICULARLY THE MECHANICAL MAINTAINERS AND THE CONTROL TECHNICIANS, PERFORM WORK WHICH IS COMMONLY PERFORMED BY STATIONARY ENGINEERS IN BOILER ROOMS SUCH AS VALVE PACKING REPLACEMENT; PUMP PACKING REPLACEMENT; MINOR PIPING REPAIRS USING THREADED FITTINGS; LUBRICATION OF PUMP AND MOTOR BEARINGS; MINOR REPAIRS TO SMALL PUMPS, FOR EXAMPLE, HOT WATER CIRCULATING PUMPS; CALIBRATION AND INSTALLATION OF PRESSURE GAUGES AND TEMPERATURE INDICATORS; OPENING, CLOSING, INSPECTION, CLEANING AND MINOR REPAIRS TO BOILERS; REPAIRING OR ASSISTING IN THE OVERHAUL OF REFRIGERATION AND AIR COMPRESSORS; REPAIRING OF INSULATION.

5. HAVING CONSIDERED THE ABOVE EVIDENCE AND THE OTHER EVIDENCE SET OUT IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT THERE IS A CLOSE INTERRELATIONSHIP OF FACILITIES AT THE BRUCE HEAVY WATER PLANT COMPLEX AND THAT THE AUXILIARY STEAM PLANT IS NOT A SEPARATE AND VIABLE FACILITY BUT INDEED IS FUNCTIONALLY DEPENDENT ON SERVICES FROM ELSEWHERE WITHIN THE COMPLEX. BECAUSE OF THE INTERRELATIONSHIP AND INTERDEPENDENCE WHICH EXISTS BETWEEN THE STATIONARY ENGINEERS AND OTHER EMPLOYEES WHO ARE EMPLOYED BOTH IN THE AUXILIARY STEAM PLANT AND ELSEWHERE WITHIN THE COMPLEX, WE FIND THAT MANY OF THE TECHNICAL SKILLS EXERCISED BY THE STATIONARY ENGINEERS WHOM THE APPLICANT SEEKS TO REPRESENT ARE SHARED BY OTHER EMPLOYEES IN ALL PARTS OF THE COMPLEX. WE ACCORDINGLY FIND THAT THE UNIT THAT THE APPLICANT SEEKS TO REPRESENT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING IN THESE CIRCUMSTANCES. WE THEREFORE FIND, PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT, THAT WE ARE NOT PREPARED TO SEVER THE STATIONARY ENGINEERS FROM OTHER EMPLOYEES AT THE BRUCE NUCLEAR POWER DEVELOPMENT SERVICES DEPARTMENT WITH WHOM THEY SHARE A COMMUNITY OF INTEREST AS PART OF A TEAM.

6. IN ADDITION TO THE FOREGOING REASONS, WE FURTHER FIND FOR THE REASONS SET OUT IN THE BOARD'S DECISION DATED SEPTEMBER 26, 1973, BOARD FILE 1801-71-R, IN AN APPLICATION INVOLVING THE SAME PARTIES, THAT THE APPLICANT HAS FAILED TO SATISFY US THAT IT WOULD BE APPROPRIATE TO FRAGMENT THE ONTARIO-WIDE BARGAINING UNIT REPRESENTED BY LOCAL 1000 IN THE MANNER PROPOSED BY THE APPLICANT IN THIS CASE.

7. THIS APPLICATION IS THEREFORE DISMISSED.

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4339-73-U: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) v. ARTISTIC WOODWORK COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: MADELEINE PARENT, N. A. ENDICOTT, JOHN ZINZER, MIETTA PURNIS AND ALBERT COHEN FOR THE APPLICANT; NORMAN L. MATHEWS, Q.C., WILLIAM G. PHELPS AND S. VANZYL FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN, AND BOARD MEMBER O. HODGES: NOVEMBER 9, 1973.

. . .

2. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 14 OF THE LABOUR RELATIONS ACT IN THAT THE RESPONDENT DID NOT BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

3. THE BOARD POINTS OUT THAT IN DISPOSING OF THIS APPLICATION AS HEREINAFTER SET OUT, IT MAKES NO FINDING AS TO WHETHER THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH. THAT IS A MATTER TO BE DECIDED BY THE COURTS. THE BOARD DOES FIND, HOWEVER, THAT THE EVIDENCE, OBJECTIVELY TESTED, (REGINA EX REL. DALEY V. NO-SAG SPRING COMPANY LTD., CANADIAN LABOUR LAW REPORTER - TRANSFER BINDER 1967-1969, ¶14,088) RAISES ARGUABLE POINTS OF LAW INCLUDING, INTER ALIA, THE QUESTION OF WHAT EFFECT THE PROVISIONS OF SECTION 37 OF THE LABOUR RELATIONS ACT MAY HAVE IN A CONSIDERATION UNDER SECTION 14 OF THE LABOUR RELATIONS ACT, OF THE PROPRIETY OF THE MANAGEMENT'S RIGHTS CLAUSE CONTENDED FOR HEREIN BY THE RESPONDENT.

4. THE BOARD THEREFORE GRANTS CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT, COMMENCING ON OR ABOUT JULY 25, 1973, UP TO AND INCLUDING AUGUST 20, 1973, THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT, CONTRARY TO SECTION 14 OF THE LABOUR RELATIONS ACT.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER J. D. BELL: NOVEMBER 9, 1973.

1. THE MAJORITY OF THE BOARD MAKES NO FINDING AS TO WHETHER THE RESPONDENT HAS BARGAINED IN GOOD FAITH.

2. I HAVE REVIEWED THE EVIDENCE PRESENTED BY THE PARTIES AND TESTED IT OBJECTIVELY. I FIND THAT BOTH PARTIES BARGAINED IN GOOD FAITH AND MADE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT DURING THE PERIOD OF JULY 25, 1973 UP TO AND INCLUDING AUGUST 20, 1973. I CANNOT IDENTIFY ANY ARGUABLE POINT OF LAW ARISING FROM THE BARGAINING STRATEGY OF EITHER PARTY DURING THIS PERIOD, AND IN PARTICULAR, THE EFFECT OF THE RESPONDENT'S BARGAINING POSITION AT THIS TIME ON THE PROPOSED MANAGEMENT'S RIGHTS CLAUSE IN ANY CONSIDERATION UNDER SECTION 14 OF THE LABOUR RELATIONS ACT.

3. IF THE OBJECTION OF ONE PARTY TO THE POSITION OF THE OTHER PARTY DURING REASONABLE NEGOTIATIONS IS TO BE CONSIDERED AN ARGUABLE POINT OF LAW, COLLECTIVE BARGAINING AS CONTEMPLATED BY THE PREAMBLE OF THE LABOUR RELATIONS ACT WILL SERIOUSLY BE RESTRAINED.

4. I WOULD DISMISS THIS APPLICATION.

4526-73-U: CANADIAN TEXTILE & CHEMICAL UNION (APPLICANT) V. ARTISTIC WOODWORK COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: F. W. PARK, MADELEINE PARENT, A. COHEN AND J. SINAGOGA FOR THE APPLICANT; W. G. PHELPS AND S. J. VAN ZYLE FOR THE RESPONDENT; R. M. PARKET FOR THE METROPOLITAN TORONTO POLICE.

DECISION OF THE BOARD:

NOVEMBER 1, 1973.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 14 OF THE LABOUR RELATIONS ACT. THE APPLICANT HAS ALLEGED "THAT THE RESPONDENT BROKE OFF BARGAINING AND FAILED TO CONTINUE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AFTER THE COMMENCEMENT OF A STRIKE ON THE 21ST OF AUGUST, 1973 AND EACH AND EVERY DAY FROM AUGUST 21ST, 1973 TO OCTOBER 1ST, 1973."

2. AT THE FIRST HEARING IN THIS MATTER ON OCTOBER 24, 1973, THE APPLICANT SOUGHT LEAVE TO AMEND ITS APPLICATION BY EXTENDING THE TIME WITHIN WHICH THE RESPONDENT WAS ALLEGED TO HAVE BREACHED THE PROVISIONS OF SECTION 14 OF THE LABOUR RELATIONS ACT TO INCLUDE TWO BARGAINING MEETINGS WHICH TOOK PLACE ON OCTOBER 10 AND OCTOBER 12, 1973. THE BOARD ADVISED THE APPLICANT THAT IT WAS PREPARED TO PERMIT THE AMENDMENT REQUESTED ON CONDITION THAT THE RESPONDENT BE GIVEN SUFFICIENT OPPORTUNITY TO MEET THE NEW ALLEGATIONS MADE BY THE APPLICANT. THE NEXT DAY THAT THIS MATTER WAS SCHEDULED FOR HEARING WAS ONE WEEK AFTER THE FIRST HEARING, I.E. OCTOBER 31, 1973. BECAUSE OF THE NATURE OF THE NEW ALLEGATIONS, THE RESPONDENT WAS NOT ABLE TO PREPARE ITSELF TO MEET THE NEW ALLEGATIONS ON OCTOBER 31. THE NEXT DAY AVAILABLE ON THE BOARD'S CALENDAR AT WHICH

ALL THREE MEMBERS OF THE DIVISION OF THE BOARD HEARING THE APPLICATION WERE AVAILABLE WAS DECEMBER 10, 1973 AND FOLLOWING THAT DATE, DECEMBER 20 WAS ALSO AVAILABLE. SINCE THE APPLICANT WAS NOT PREPARED TO ADJOURN THIS MATTER UNTIL DECEMBER 10, IT ELECTED NOT TO AMEND ITS APPLICATION.

3. THE BOARD ALSO DIRECTED THE APPLICANT TO COMPLY WITH SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND FILE FULL PARTICULARS OF ITS ALLEGATIONS ON OR BEFORE 4:30 P.M. ON FRIDAY, OCTOBER 26. THE APPLICANT PROVIDED SOME PARTICULARS IN ACCORDANCE WITH THE BOARD'S DIRECTIONS BY TWO LETTERS DATED OCTOBER 26, 1973.

4. AT THE HEARING ON OCTOBER 31, 1973, THE RESPONDENT, BY WAY OF PRELIMINARY OBJECTION, REQUESTED THAT ALL OF THE PARTICULARS PROVIDED BY THE APPLICANT BE STRUCK OUT IN THAT THEY EITHER FAILED TO COMPLY WITH THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE OR WERE NOT RELATED TO THE CHARGE OF FAILING TO BARGAIN IN GOOD FAITH CONTRARY TO THE PROVISIONS OF SECTION 14 OF THE LABOUR RELATIONS ACT.

5. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE RESPONDENT'S PRELIMINARY OBJECTION, THE BOARD GAVE THE FOLLOWING ORAL DECISION.

6. WE HAVE CONSIDERED THE REPRESENTATIONS OF COUNSEL WITH RESPECT TO THE RESPONDENT'S PRELIMINARY OBJECTIONS IN THIS MATTER. WHILE THERE ARE SOME GROUNDS FOR COMPLAINT CONCERNING THE DEFICIENCIES IN PARTICULARS SUPPLIED BY THE APPLICANT, WE ARE OF THE VIEW THAT THERE IS AN EVEN GREATER OBJECTION CONCERNING THE RELEVANCY OF THE CHARGES IN VIEW OF THE TIME LIMITATIONS WHICH THE APPLICANT HAS PLACED ON ITSELF IN FRAMING ITS APPLICATION. THE APPLICANT HAS SO FRAMED ITS APPLICATION SO AS TO RESTRICT ITS CLAIM FOR RELIEF TO THE EVENTS WHICH TOOK PLACE BETWEEN AUGUST 21, 1973 AND OCTOBER 1, 1973. IT HAS BASED ITS APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT ON THE RESPONDENT'S ALLEGED FAILURE TO BARGAIN IN GOOD FAITH DURING THAT PERIOD CONTRARY TO SECTION 14 OF THE ACT. THE APPLICANT IN ITS REPRESENTATIONS HAS INDICATED THAT IT WILL BE RELYING ON EVENTS WHICH TOOK PLACE PRIOR TO AUGUST 21 AS EVIDENCE OF A PATTERN OF IMPROPER CONDUCT, IN THE LIGHT OF WHICH THE EVENTS BETWEEN AUGUST 21 AND OCTOBER 1 MUST BE VIEWED.

7. THE EVENTS WHICH PRECEDED AUGUST 21 ARE PRESENTLY BEING CONSIDERED BY ANOTHER DIVISION OF THE BOARD IN THE FIRST APPLICATION FOR CONSENT TO PROSECUTE WHICH THE APPLICANT FILED. WE ARE NOT PREPARED IN THIS CASE TO ASSUME THAT THE RESPONDENT VIOLATED THE PROVISIONS OF SECTION 14 OF THE ACT PRIOR TO AUGUST 21. IF THE OTHER DIVISION GRANTS CONSENT TO PROSECUTE FOR FAILING TO BARGAIN IN GOOD FAITH PRIOR TO AUGUST 21, THE APPLICANT MAY BE ABLE TO ESTABLISH THAT THE RESPONDENT HAS CONTINUED THE SAME PATTERN OF IMPROPER CONDUCT AFTER THAT DATE. ON THE OTHER HAND, IF THE OTHER DIVISION FINDS THAT THE RESPONDENT HAS BARGAINED IN GOOD FAITH UP TO AUGUST 21, THE EVENTS WHICH FOLLOWED AUGUST 21 COULD NOT BE SAID TO BE PART OF A PATTERN OF IMPROPER CONDUCT AS ALLEGED BY THE APPLICANT. THIS BOARD IS NOT PREPARED TO RETRY ALL

THE EVENTS WHICH IS BEFORE THE OTHER DIVISION OF THE BOARD AND BE PLACED IN A POSITION WHERE IT MIGHT ARRIVE AT A DIFFERENT CONCLUSION THAN THE OTHER DIVISION WITH RESPECT TO THE SAME ISSUE. THE OTHER DIVISION IS SEIZED WITH THAT ISSUE. (ED NOTE - SEE; ARTISTIC WOODWORK COMPANY LIMITED (SUPRA) AT P. 565.)

8. AGAIN, WE ARE TOLD THAT NO BARGAINING MEETINGS TOOK PLACE BETWEEN AUGUST 21 AND OCTOBER 1. HOWEVER, TWO MEETINGS WERE HELD ON OCTOBER 10 AND OCTOBER 12. IF THE EVENTS WHICH PRECEDED OCTOBER 1 WERE PART OF A PATTERN OF BAD FAITH BARGAINING WHICH TOOK PLACE AT THE OCTOBER 10 AND OCTOBER 12 MEETINGS, SUCH EVIDENCE SHOULD BE TIED INTO THE BARGAINING WHICH TOOK PLACE AT THOSE MEETINGS. BECAUSE OF THE TIME RESTRICTIONS WHICH THE APPLICANT HAS PLACED ON ITSELF, THE APPLICANT IS PRECLUDED FROM CALLING EVIDENCE CONCERNING THESE MEETINGS.

9. IT IS NOTED THAT THE APPLICANT HAS NOT ALLEGED THAT THE RESPONDENT REFUSED TO MEET AND BARGAIN DURING THE DATES WITHIN WHICH IT HAS ALLEGED THAT THE RESPONDENT CONTRAVENED SECTION 14. WHILE MR. MCGUIRE, THE MEDIATION OFFICER, OFFERED HIS SERVICES TO THE PARTIES, THERE IS NO ALLEGATION THAT THE RESPONDENT FRUSTRATED MR. MCGUIRE'S ATTEMPTS TO SET UP A MEETING DURING THIS PERIOD.

10. THE FACT THAT BARGAINING STOPPED AT THE COMMENCEMENT OF THE STRIKE IS NOT, OF ITSELF, EVIDENCE OF BAD FAITH. INDEED, IT IS QUITE NORMAL THAT THERE BE A HIATUS IN BARGAINING AT THE OUTSET OF A STRIKE IN ORDER THAT TIME ELAPSE UNTIL THE EFFECTS OF THE STRIKE ARE FELT IN THE HOPEFUL ANTICIPATION THAT THE CLIMATE OF BARGAINING WOULD BE SUFFICIENTLY ALTERED BY THE STRIKE SO THAT A SETTLEMENT OF THE DISPUTE CAN BE NEGOTIATED.

11. AGAIN, IN THE ABSENCE OF BAD FAITH BARGAINING PRIOR TO A STRIKE, THE BOARD HAS HELD THAT BEFORE A UNION CAN PROPERLY INSIST THAT AN EMPLOYER AGAIN MEET AND BARGAIN WITH THE UNION, THE UNION MUST FIRST MAKE A MEANINGFUL REDUCTION IN THE PROPOSALS THAT IT LAST MADE TO THE COMPANY PRIOR TO THE ONSET OF THE STRIKE. SEE NEW METHOD LAUNDRY AND DRY CLEANERS CASE, 57 CLLC ¶18,059; KAUFMAN RUBBER (ONTARIO) LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1960, P. 235; DEACON BROTHERS SPORTSWEAR LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1962, P. 357; TILCO PLASTICS LIMITED CASE, OLRB M.R. SEPTEMBER 1966, P. 422; SCM (CANADA) LIMITED CASE, OLRB MONTHLY REPORT, JULY 1967, P. 367. SIMILARLY, AFTER A STRIKE COMMENCES, A COMPANY CANNOT REQUIRE THAT THE UNION MEET TO BARGAIN UNLESS THERE IS A MEANINGFUL INCREASE IN THE LAST OFFER MADE TO THE UNION PRIOR TO THE STRIKE. HOWEVER, IF IT HAS BEEN FOUND THAT THE COMPANY HAS ENGAGED IN BAD FAITH BARGAINING PRIOR TO THE COMMENCEMENT OF THE STRIKE, THE UNION NEED NOT ALTER ITS LAST PROPOSAL IN ORDER TO INSIST THAT THE COMPANY RETURN TO THE BARGAINING TABLE AND COMPLY WITH SECTION 14 OF THE ACT.

12. HOWEVER THAT MAY BE, WE ARE OF THE VIEW THAT THE INSTANT APPLICATION IS PREMATURE ON TWO GROUNDS. FIRSTLY, UNTIL SUCH TIME AS A FINDING OF A BREACH OF SECTION 14 OF THE ACT HAS BEEN MADE, THE EVENTS BETWEEN

AUGUST 21 AND OCTOBER 1 CANNOT BE SAID TO BE PART OF A PATTERN OF SIMILAR IMPROPER CONDUCT. SECONDLY, SINCE THE BOARD CANNOT CONCERN ITSELF WITH THE MEETINGS WHICH FOLLOWED OCTOBER 1 BECAUSE OF THE MANNER IN WHICH THE APPLICATION HAS BEEN FRAMED, THE EVENTS BETWEEN AUGUST 21 AND OCTOBER 1 CANNOT BE LOOKED AT IN THE LIGHT OF SUCH SUBSEQUENT MEETINGS AND THIS APPLICATION IS ACCORDINGLY PREMATURE WITH RESPECT TO SUCH MEETINGS. IN SUMMARY, THE APPLICATION IS PREMATURE IN SO FAR AS THE EVENTS WHICH TOOK PLACE DURING THE PERIOD IN QUESTION RELATE TO EITHER THE EVENTS PRIOR TO AUGUST 21 OR AFTER OCTOBER 1.

13. ACCORDINGLY, EVEN IF THE BOARD WERE TO ACCEPT ALL THE ALLEGATIONS MADE BY THE APPLICANT AS PROVEN FACTS, SUCH FACTS WHEN CONSIDERED SEPARATE AND APART FROM THE EVENTS PRIOR TO AUGUST 21 OR AFTER OCTOBER 1 DO NOT CONSTITUTE A FAILURE TO BARGAIN IN GOOD FAITH CONTRARY TO SECTION 14 OF THE ACT. SINCE THERE IS NO ALLEGATION THAT THE APPLICANT ATTEMPTED TO BARGAIN WITH THE RESPONDENT DURING THE PERIOD IN QUESTION, WHATEVER EVENTS TOOK PLACE DURING THAT PERIOD CANNOT BE CONNECTED WITH THE BARGAINING BETWEEN THE PARTIES EXCEPT IN SO FAR AS SUCH EVENTS ARE RELATED TO THE BARGAINING WHICH TOOK PLACE PRIOR TO AUGUST 21 OR AFTER OCTOBER 1. ALL OTHER ALLEGATIONS WHICH DO NOT RELATE TO THE BARGAINING WHICH TOOK PLACE PRIOR TO AUGUST 21 OR OCTOBER 1 ARE SO DEFICIENT IN PARTICULARITY AND ARE SO GENERAL AND VAGUE THAT THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO COMPLY WITH THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND THEREFORE THE BOARD IS NOT PREPARED TO PERMIT THE APPLICANT TO CALL EVIDENCE WITH RESPECT TO SUCH ALLEGATIONS ESPECIALLY IN VIEW OF THE FACT THAT THE APPLICANT WAS ALREADY GIVEN A FURTHER OPPORTUNITY TO FILE PARTICULARS BY THE DECISION OF THE BOARD AT THE FIRST HEARING IN THIS MATTER.

14. THIS APPLICATION IS THEREFORE DISMISSED

15. WE HAVE GIVEN OUR DECISION ORALLY AT THE HEARING IN THIS MATTER IN ORDER THAT THE APPLICANT MAY RECONSIDER ITS POSITION WITHOUT DELAY. IF THE APPLICANT WISHES TO FILE A NEW APPLICATION WHICH WILL ENCOMPASS ALL THE EVENTS SURROUNDING THE BARGAINING WHICH TOOK PLACE ON OCTOBER 10 AND OCTOBER 12, IT IS AT LIBERTY TO DO SO SINCE THIS APPLICATION IS DISMISSED WITHOUT PREJUDICE TO THE APPLICANT'S RIGHT TO REAPPLY FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR ANY BREACH OF SECTION 14 OF THE ACT WHICH MAY HAVE OCCURRED ON OR AFTER AUGUST 21, 1973.

4380-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) v. ALDON INSPECTION LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. GRUSHLEA FOR THE APPLICANT AND E. JAKUBASSA FOR THE RESPONDENT.

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE:
 NOVEMBER 7, 1973.

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3. AT THE HEARING OF THIS MATTER ON OCTOBER 9, 1973, THE RESPONDENT RAISED OBJECTION TO THE APPLICANT REPRESENTING ITS EMPLOYEES ON THE BASIS THAT THEIR WORK IN QUESTION, NAMELY THAT OF PROVIDING NON-DESTRUCTIVE TESTING SERVICES TO THE RESPONDENT'S CLIENTS, WOULD REQUIRE SUCH EMPLOYEES TO INSPECT THE ORIGINAL WORK OF FELLOW MEMBERS OF THE APPLICANT AND THUS PLACE THEM IN A CONFLICT OF INTEREST SITUATION. THE APPLICANT DID NOT RAISE BEFORE US ANY QUESTION CONCERNING THE BOARD'S JURISDICTION TO DECIDE SUCH AN ISSUE AND WE EXPRESS OUR DOUBTS IN THIS REGARD, BUT LET US FOR THE SAKE OF ARGUMENT, ASSUME THAT WE HAVE THE NECESSARY JURISDICTION.

4. THE BOARD HAS DEALT WITH AN ANALOGOUS SITUATION IN THE PAST CONCERNING QUALITY CONTROL FUNCTIONS AS PERFORMED BY CERTAIN TECHNICAL EMPLOYEES IN A PLANT SETTING. THE USUAL PRACTICE OF THE BOARD IN THIS REGARD IS TO INCLUDE SUCH EMPLOYEES IN A BARGAINING UNIT TOGETHER WITH THE PRODUCTION EMPLOYEES, EVEN THOUGH THEY WOULD BE REQUIRED TO INSPECT AND REPORT UPON THE WORK OF THE PRODUCTION EMPLOYEES. (SEE, FOR EXAMPLE, THE AFFILIATED MEDICAL PRODUCTS LIMITED CASE, OLRB M.R. JANUARY 1969, P. 1014). IN OTHER WORDS, NOT ONLY WOULD THESE QUALITY CONTROL EMPLOYEES BE REPRESENTED IN THESE CIRCUMSTANCES BY THE SAME TRADE UNION AS THE PRODUCTION EMPLOYEES, AS APPEARS TO BE THE CASE IN THE PROCEEDINGS NOW BEFORE US, BUT MOREOVER, BOTH GROUPS OF EMPLOYEES WOULD BE PLACED IN THE SAME BARGAINING UNIT. IN THE RESULT, AND EVEN ASSUMING THE BOARD HAS JURISDICTION TO DECIDE THIS ISSUE, THE BOARD DISMISSES THE OBJECTION AS RAISED BY THE RESPONDENT.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H.J.F. ADE: NOVEMBER 7, 1973.

WHILE I FULLY APPRECIATE THAT THERE ARE NO STATUTORY PROVISIONS BARRING THE APPLICANT FROM REPRESENTING THE EMPLOYEES IN THESE CIRCUMSTANCES, I HAVE SOME APPREHENSION IN ALLOWING THESE EMPLOYEES ENGAGED IN NON-DESTRUCTIVE TESTING SERVICES, TO INSPECT, AND THUS PASS UPON OR REJECT THE ORIGINAL WORK OF FELLOW MEMBERS OF THE APPLICANT. IN MY OPINION, SUCH A SITUATION IS OPEN TO THE POSSIBILITY OF A CONFLICT OF INTEREST ARISING.

3274-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) v. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

3280-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. ARMSTRONG, J. O'DONNELL, JOHN DINARDO AND V. GENTILE FOR THE APPLICANT; M. GORDON AND J. DARRIGO FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 13, 1973.

1. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE HEREBY CONSOLIDATED.

2. THE RESPONDENT NOW APPLIES TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION APPLICANTS NO LONGER REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT, ON THE BASIS THAT THE SAID TRADE UNION HAD OBTAINED BY FRAUD THE CERTIFICATES PREVIOUSLY ISSUED BY THE BOARD IN THESE PROCEEDINGS.

3. THE EVIDENCE DISCLOSES THAT THE BOARD PURSUANT TO ITS DECISION DATED MAY 7, 1973 (BOARD FILE NO. 3280-72-R) GRANTED, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, BARGAINING RIGHTS TO THE APPLICANT LOCAL 173 IN RESPECT OF AN ALL EMPLOYEE UNIT OF THE RESPONDENT "AT ITS RETAIL STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGERS", AND OTHER PERSONS NOT RELEVANT TO THIS APPLICATION. PURSUANT TO ANOTHER DECISION OF THE BOARD DATED MAY 7, 1973 (BOARD FILE NO. 3274-72-R), THE BOARD GRANTED, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, BARGAINING RIGHTS TO THE APPLICANT LOCAL 633 IN RESPECT OF A MEAT DEPARTMENT UNIT OF EMPLOYEES OF THE RESPONDENT "AT ITS RETAIL STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT MEAT DEPARTMENT MANAGERS" AND OTHER PERSONS NOT RELEVANT TO THIS APPLICATION.

4. THE GROUNDS FOR RELIEF AS ALLEGED BY THE RESPONDENT DURING THE COMMENCEMENT OF THE HEARING OF THIS MATTER ON NOVEMBER 5, 1973, ARE FOUR-FOLD, THE RELEVANT PORTIONS OF WHICH MAY BE SUMMARIZED AS FOLLOWS - NAMELY, THAT DURING THE ORGANIZATIONAL CAMPAIGN:

- (1) CERTAIN UNION OFFICIALS DID INDUCE JOSEPH ROMANINO TO SIGN A MEMBERSHIP CARD AT A TIME WHEN THEY WERE AWARE THAT HE WAS ASSISTANT STORE MANAGER AND THEREFORE EXERCISED MANAGERIAL FUNCTIONS, AND THAT FURTHER, THE SAID JOSEPH ROMANINO WAS INFLUENTIAL IN INTRODUCING OTHER EMPLOYEES TO THE SAID UNION OFFICIALS FOR THE PURPOSE OF APPLYING FOR UNION MEMBERSHIP;

- (2) CERTAIN UNION OFFICIALS DID INDUCE ANGELO D'AGOSTINO TO SIGN A MEMBERSHIP CARD AT A TIME WHEN HE WAS EXERCISING MANAGERIAL FUNCTIONS AS A MEAT DEPARTMENT HEAD;
- (3) CERTAIN UNION OFFICIALS DID EXPRESS THE INTENTION TO AN INDIVIDUAL THAT THEY WOULD BE APPROACHING CERTAIN MEMBERS OF MANAGEMENT ABOUT JOINING THE UNION AND INFERRING THAT SOME OF THESE MEMBERS OF MANAGEMENT HAD ALREADY BEEN APPROACHED;
- (4) CERTAIN MEMBERS OF MANAGEMENT DID RECEIVE IN THE COURSE OF THE MAILS, CORRESPONDENCE FROM THE TRADE UNION APPLICANTS RELATING TO THESE CERTIFICATION PROCEEDINGS.

5. UPON BEING ADVISED BY THE BOARD THAT THE RECORDS DISCLOSED THAT ANGELO D'AGOSTINO HAD SIGNED A MEMBERSHIP CARD ON FEBRUARY 7, 1973, APPROXIMATELY ONE MONTH FOLLOWING HIS DEMOTION TO "BUTCHER", THE RESPONDENT WITHDREW ITS SECOND GROUND FOR RELIEF AS SET OUT ABOVE.

6. DEALING WITH THE FIRST GROUND OF RELIEF, THE BOARD DREW TO THE ATTENTION OF THE PARTIES THAT THE LIST OF EMPLOYEES AS FILED BY THE RESPONDENT DISCLOSED THAT JOSEPH ROMANINO'S NAME APPEARS UNDER SCHEDULE A WHEREIN HIS OCCUPATIONAL CLASSIFICATION IS DESCRIBED AS "CLERK". THE RESPONDENT TAKES THE POSITION THAT SUCH DESCRIPTION WAS MADE IN ERROR AND THAT ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY FEBRUARY 14, 1973, HE WAS REALLY AN "ASSISTANT STORE MANAGER", AND AS SUCH EXERCISING MANAGERIAL FUNCTIONS ALTHOUGH THE RESPONDENT HAD NO SUCH FORMAL CLASSIFICATION AT THE TIME. IT SHOULD BE NOTED HOWEVER, THAT THE RESPONDENT HAD THROUGH ITS FORMER COUNSEL (THE RESPONDENT AS OF THE DATE OF THE FILING OF THIS APPLICATION ON SEPTEMBER 24, 1973, HAVING RETAINED NEW COUNSEL) DID AGREE TO THE SPECIFIC EXCLUSION OF "ASSISTANT STORE MANAGERS". FURTHER, THIS BOARD HAS HAD THE BENEFIT OF ENTERTAINING ROMANINO'S TESTIMONY ON JUNE 11, 1973, WITH RESPECT TO CERTAIN CHARGES OF INTIMIDATION AS FILED BY THE RESPONDENT ON MARCH 19, 1973 IN RELATION TO PRIOR RELATED PROCEEDINGS INVOLVING THE PART-TIME BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT. (SEE BOARD FILE NO. 3274-72-R). IN THE COURSE OF THAT TESTIMONY, OUR NOTES REVEAL THAT ROMANINO HIMSELF TOOK THE POSITION THAT HE WAS MERELY AN ORDINARY WORKER IN THE RESPONDENT'S PRODUCE DEPARTMENT. HAVING CAREFULLY REVIEWED ALL OF THESE CIRCUMSTANCES AND IN THE FACE OF CLEAR AND UNEQUIVOCAL REPRESENTATIONS, WE ARE NOT PREPARED TO PERMIT THE RESPONDENT TO NOW ADDUCE FURTHER EVIDENCE IN AN EFFORT TO IN EFFECT REPUDIATE ITS PRIOR REPRESENTATIONS AND THE EVIDENCE AS TENDERED IN THE PREVIOUS PROCEEDINGS BEFORE THIS BOARD.

7. AS REGARDS THE REMAINING TWO GROUNDS FOR RELIEF, AND EVEN IF FOR THE PURPOSES OF ARGUMENT, WE SHOULD ASSUME THE TRUTH OF THE REPRESENTATIONS,

SENTATIONS AS CONTAINED IN THE FOURTH GROUND FOR RELIEF, WE ARE NEVERTHELESS NOT SATISFIED THAT SUCH REPRESENTATIONS TAKEN TOGETHER WITH THE VAGUE ALLEGATIONS AS APPEARING IN THE THIRD GROUND FOR RELIEF, CONSTITUTE IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AN ADEQUATE FOUNDATION UPON WHICH TO LAUNCH THE TYPE OF ENQUIRY AS CONTEMPLATED BY THE TERM "FRAUD" WITHIN THE MEANING OF SECTION 50 OF THE SAID ACT AND AS DEFINED IN THE L'ABBE CONSTRUCTION LIMITED CASE OLRB M.R. SEPTEMBER 1970 AT P. 673.

8. IN THE RESULT, THE BOARD CONFIRMS ITS ORAL DECISION AS DELIVERED AT THE HEARING OF THIS MATTER, NAMELY THAT THE RESPONDENT HAS FAILED TO SHOW CAUSE WHY THE BOARD SHOULD ENTERTAIN ITS APPLICATION AS FILED PURSUANT TO THE PROVISIONS OF SECTION 50 OF THE SAID ACT. ACCORDINGLY, THIS APPLICATION IS DISMISSED.

4650-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

DECISION OF THE BOARD: NOVEMBER 5, 1973.

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5. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF ITS REGULAR CRAFT BARGAINING UNIT OF OPERATING ENGINEERS IN THE BOARD'S REGULAR GEOGRAPHIC AREA #3. THE RESPONDENT, HOWEVER, PROPOSES THE EXCLUSION OF SHOP AND YARD EMPLOYEES FROM THE APPROPRIATE BARGAINING UNIT. THE APPLICANT AND THE RESPONDENT HAVE INFORMED THE BOARD THAT THE RESPONDENT DOES NOT HAVE SHOP AND YARD EMPLOYEES IN THE BOARD'S GEOGRAPHIC AREA #3. THE RESPONDENT HAS ALSO INFORMED THE BOARD THAT THE RESPONDENT MAY HAVE SHOP AND YARD EMPLOYEES IN THE BOARD'S GEOGRAPHIC AREA #3 TWO YEARS FROM NOW. IN THESE CIRCUMSTANCES, THE BOARD SEES NO REASON NOT TO FIND THAT THE APPLICANT'S REGULAR CRAFT BARGAINING UNIT IS THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3837-73-R: NURSES' ASSOCIATION ST. MICHAEL'S HOSPITAL (APPLICANT) V. ST. MICHAEL'S HOSPITAL (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: DONALD F.O. HERSEY FOR THE APPLICANT; KEITH BILLINGS, SISTER IRENE MACDONALD AND G. MORGAN FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 19, 1973.

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3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED SEPTEMBER 21, 1973 AND THE REPRESENTATIONS OF THE PARTIES MADE WITH RESPECT THERETO, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD NURSE SPEND THE MAJORITY OF THEIR TIME SUPERVISING OTHER EMPLOYEES AND DO "NOT SPEND ANY TIME DOING BEDSIDE NURSING" AND "WOULD ONLY GIVE NURSING CARE IF SHE CAME ON A SITUATION WHERE A PATIENT NEEDED CARE IMMEDIATELY." THE HEAD NURSES ARE ALSO ACTIVELY INVOLVED IN THE HIRING AND FIRING PROCESS AND MAKE EFFECTIVE RECOMMENDATIONS IN WRITTEN ASSESSMENTS OF EMPLOYEES. THE HEAD NURSES ASSIGN WORK, INTEGRATE THE WORK WITH OTHER DEPARTMENTS AND AUTHORIZE OVERTIME. WE ACCORDINGLY FIND THAT THE HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED.

4. THE BOARD THEREFORE FINDS THAT ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT ENGAGED IN A NURSING CAPACITY AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, HEAD NURSES, PERSONS ABOVE THE RANKS OF SUPERVISOR AND HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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3824-73-R: YVON COTÉ ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CHAPLEAU LUMBER CO. LTD. (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: F. R. VON VEH AND YVON COTÉ FOR THE APPLICANT; M. LEVINSON AND J. HORAN FOR THE RESPONDENT; W. V. SASSO FOR THE INTERVENER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: NOVEMBER 19, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD DATED JULY 4, 1973, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING ON SEPTEMBER 5, 1973, TO ENABLE THE PARTIES TO ADDUCE EVIDENCE AND SUBMIT REPRESENTATIONS CONCERNING THE PRELIMINARY ISSUE AS TO WHETHER THE BOARD SHOULD, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, IMPOSE A BAR TO THIS APPLICATION, AND TO ENABLE THE BOARD TO DISPOSE OF ALL OTHER OUTSTANDING ISSUES. A FURTHER HEARING WAS HELD IN THIS REGARD ON OCTOBER 17, 1973.

2. IT IS THE CONTENTION OF THE RESPONDENT TRADE UNION THAT THE BOARD SHOULD, IN THE EXERCISE OF ITS DISCRETION PURSUANT TO THE PROVISIONS OF SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT, REFUSE TO ENTERTAIN THIS APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT ON THE BASIS OF AN EXISTING "ACTIVE BARGAINING RELATIONSHIP" BETWEEN THE RESPONDENT AND THE INTERVENER WITHIN THE PRINCIPLES AS SET OUT IN THE TRINIDAD LEASEHOLDS (CANADA) LTD. CASE 52 CLLC ¶17,005 AND THE MORE RECENT DECISION OF THE BOARD IN THE SEVEN-UP (ONTARIO) LIMITED CASE [1971] OLRB REP. (DECEMBER) 791. IN THIS REGARD, IT IS SUBMITTED THAT THESE PARTIES MUST BE ALLOWED A REASONABLE OPPORTUNITY WITHIN WHICH TO BARGAIN, AND THAT IN THE INSTANT CASE, AN INITIAL APPLICATION FOR TERMINATION OF BARGAINING RIGHTS HAVING BEEN DISMISSED BY THE BOARD BECAUSE THE APPLICANT DID NOT ENJOY THE REQUISITE EMPLOYEE SUPPORT, THE BOARD SHOULD NOT NOW PROCEED TO ENTERTAIN A SECOND SIMILAR APPLICATION FILED BY THE SAME APPLICANT SOME TWO DAYS SUBSEQUENT TO THE DATE OF THAT INITIAL DECISION.

3. THE APPLICANT CHALLENGED THE PRINCIPLES AS SET OUT IN THE CASES ABOVE QUOTED AND QUESTIONED THE BOARD'S JURISDICTION TO ENTERTAIN THE SAID PRELIMINARY ISSUE ON THE BASIS THAT SECTION 92(2)(1) OF THE SAID ACT, BEING MERELY A PROCEDURAL PROVISION, IT THEREFORE CANNOT BE USED TO DEFEAT THE SUBSTANTIVE PROVISIONS OF SECTION 49 OF THE SAID ACT. HAVING CAREFULLY REVIEWED THE REPRESENTATIONS OF THE PARTIES IN THIS REGARD, WE ARE SATISFIED THAT, IN THE ABSENCE OF ANY SPECIFIC PRESCRIPTIONS APPEARING IN THE PROVISIONS OF SECTION 49 OR ELSEWHERE IN THE SAID ACT, THE OCCASION AND MANNER OF THE EXERCISE OF THE POWERS CONFERRED TO THE BOARD PURSUANT TO SECTION 92(2)(1) OF THE SAID ACT ARE CLEARLY MATTERS FALLING WITHIN OUR DISCRETION. (IN THIS REGARD, SEE THE DECISION OF THE ONTARIO SUPREME COURT IN TRW ELECTRONIC COMPONENTS LTD. v OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION ET AL 70 CLLC ¶14,003.) ACCORDINGLY, WE REJECT THE APPLICANT'S POSITION IN THIS REGARD.

4. ALTERNATIVELY, THE APPLICANT MAINTAINS THAT THE PRINCIPLE GOVERNING THE DISPOSITION OF THE CASES CITED IN PARAGRAPH #2 HEREIN ARE NOT APPLICABLE TO THE FACTS OF THE INSTANT CASE AND THAT CERTAIN "SPECIAL CIRCUMSTANCES" MUST, IF THE BOARD IS TO ACT IN AN EQUITABLE AND JUDICIOUS MANNER IN THE EXERCISE OF ITS DISCRETION, DICTATE THAT A REPRESENTATION VOTE BE ORDERED PURSUANT TO THE PROVISIONS OF SECTION 49 OF THE SAID ACT.

5. THE EVIDENCE DISCLOSES THAT THE RESPONDENT TRADE UNION WAS CERTIFIED BY THE BOARD ON MARCH 23, 1972 (BOARD FILE NO. 1558-71-R)

TO REPRESENT CERTAIN EMPLOYEES OF THE INTERVENER AT CHAPLEAU. ON DECEMBER 5, 1973, CONCILIATION SERVICES WERE GRANTED BY THE MINISTER. MR. BILLINGTON, A CONCILIATION OFFICER, MET WITH THESE PARTIES IN THIS REGARD ON DECEMBER 20, 1972 AND FEBRUARY 8, 1973. ON MARCH 1, 1973, THE PARTIES WERE ADVISED THAT THE MINISTER DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD. NEGOTIATIONS NEVERTHELESS PERSISTED AND ON MARCH 13, 1973, THE PARTIES MET WITH MR. SMITH, A MEDIATOR APPOINTED UNDER THE PROVISIONS OF THE SAID ACT. IT WOULD APPEAR THAT SOME PROGRESS IN NEGOTIATIONS WAS ACHIEVED BY THIS TIME TOWARDS EFFECTING A FIRST COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

6. BY LETTER DATED MARCH 15, 1973 (EXHIBIT #1), MR. SASSO, THE INTERVENER'S REPRESENTATIVE DURING NEGOTIATIONS, SUBMITTED TO HIS UNION COUNTERPART, MR. BEDARD, CERTAIN AMENDMENTS (IN ADDITION TO THOSE ALREADY SUBMITTED) TO A PROPOSED COLLECTIVE AGREEMENT. ACCORDING TO MR. BEDARD, A RATIFICATION MEETING WAS THEN HELD ON MARCH 19, 1973, DURING WHICH TIME THE EMPLOYEES VOTED TO ACCEPT THE PROPOSED COLLECTIVE AGREEMENT. UPON CROSS-EXAMINATION, MR. BEDARD CONCEDED THAT ALTHOUGH APPROXIMATELY 109 EMPLOYEES OF THE INTERVENER ATTENDED THE MEETING, 69 OF THESE EMPLOYEES WERE REQUIRED TO LEAVE PRIOR TO THE TAKING OF THE VOTE BECAUSE THEY WERE NOT MEMBERS OF THE RESPONDENT. IN THE RESULT, THE VOTE WAS DECIDED BY THE MEMBERSHIP CONSISTING OF 40 EMPLOYEES OF THE INTERVENER.

7. ON MARCH 21, 1973, MR. BEDARD BY TELEGRAM (EXHIBIT #2) ADVISED THE INTERVENER OF THE RATIFICATION "OF A COLLECTIVE AGREEMENT TO BE CONCLUDED AND SIGNED" BETWEEN THESE PARTIES. BY CONFIRMING LETTER DATED MARCH 24, 1973 (EXHIBIT #3), MR. BEDARD REQUESTED THAT THE INTERVENER INFORM HIM OF THE DATE AND PLACE OF A MEETING FOR THE PURPOSE OF SIGNING THE SAID AGREEMENT. HOWEVER, IT WOULD APPEAR THAT THE PARTIES HAD FAILED TO REACH COMPLETE ACCORD CONCERNING CERTAIN ITEMS RELATING TO HOLIDAY PAY AND OVERTIME AND BY LETTER DATED APRIL 2, 1973 (EXHIBIT #4), MR. SASSO ADVISED MR. BEDARD THAT MR. BEDARD'S "PROPOSALS" IN THIS REGARD WOULD BE DIRECTED TO THE INTERVENER. BY LETTER DATED APRIL 19, 1973 (EXHIBIT #5), MR. BEDARD ADVISED MR. SASSO THAT HIS REQUEST IN THIS REGARD WAS NOT "TO BE CONSTRUED TO MEAN THAT OUR RATIFICATION OF THE AGREEMENT WAS CONDITIONAL UPON THE RE-WRITING OF ANY OF THE CLAUSES OF THE PROPOSED AGREEMENT." MR. SASSO, BY LETTER DATED APRIL 24, 1973 (EXHIBIT #6) IS ACKNOWLEDGING MR. BEDARD'S LETTER, FURTHER ADVISED HIM AS FOLLOWS:

"SINCE THE ISSUE OF THE EXISTENCE OF A COLLECTIVE AGREEMENT HAS BEEN PLACED BEFORE THE ONTARIO LABOUR RELATIONS BOARD, WE CONSIDER IT IMPROPER AT THIS TIME TO EXCHANGE CORRESPONDENCE CONCERNING THE CONDUCT OF COLLECTIVE BARGAINING.

IN THE CIRCUMSTANCES, WE CAN ONLY REITERATE THAT OUR PREVIOUS CORRESPONDENCE

PROPERLY REFLECTS THE SITUATION EXISTING
AT THE TIME OF ITS DELIVERY."

8. THE EVIDENCE FURTHER DISCLOSES THAT ON APRIL 3, 1973, THE APPLICANT IN THE INSTANT CASE HAD FILED AN EARLIER APPLICATION TO THE BOARD UNDER THE PROVISIONS OF SECTION 49 OF THE SAID ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS HELD BY THE RESPONDENT. (BOARD FILE No. 3549-73-R). THE HEARING IN THIS REGARD WAS HELD IN TIMMINS ON MAY 10, 1973 AND BY THE DECISION OF THE BOARD IN THAT MATTER DATED MAY 15, 1973, THAT APPLICATION WAS DISMISSED ON THE GROUNDS THAT "LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT TRADE UNION." ON MAY 17, 1973, THE INSTANT APPLICATION WAS FILED WITH THE BOARD.

9. THE UNCONTRADICTED EVIDENCE OF MR. BEDARD IS THAT WHEN HE APPROACHED VARIOUS OFFICIALS OF THE INTERVENER DURING THE COURSE OF THE MAY 10 HEARING IN TIMMINS WITH A VIEW TOWARDS IMPLEMENTING THE TERMS OF THE UNEXECUTED AGREEMENT, OR ALTERNATIVELY, HAVING THE AGREEMENT SIGNED, HE WAS ADVISED BY THE INTERVENER THAT, ASIDE FROM SUGGESTIONS RELATING TO THE GRANTING OF CERTAIN PROPOSED MONETARY INCREASES, IT WOULD TAKE NO ACTION UNTIL THE MATTERS THEN PENDING BEFORE THE BOARD IN THOSE PROCEEDINGS HAD BEEN FINALIZED.

10. IT IS NOW CLEAR THAT NO AGREEMENT WAS EVER IN FACT EXECUTED BY THE PARTIES, AND HAVING REGARD TO ALL THE EVIDENCE AS ADDUCED IN THIS RESPECT AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, WE ARE SATISFIED THAT NO COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE SAID ACT, HAS BEEN ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER. THE RESPONDENT, HOWEVER, MAINTAINS THAT THIS FACTOR ALONE DOES NOT PRECLUDE A FINDING BY THIS BOARD THAT THESE PARTIES WERE NEVERTHELESS ENGAGED IN AN "ACTIVE BARGAINING RELATIONSHIP" AS OF THE DATE OF THE FILING OF THE INSTANT APPLICATION ON MAY 17, 1973. THE APPLICANT TAKES THE POSITION THAT THERE WAS NOTHING TO PROHIBIT THE RESPONDENT FROM ATTEMPTING TO BARGAIN OR RE-OPEN NEGOTIATIONS WITH THE INTERVENER SINCE THE MAY 10 HEARING AT TIMMINS. ALTHOUGH WE ARE MOST SYMPATHETIC WITH THE PASSIVE POSITION TAKEN BY THE INTERVENER AT THIS POINT PENDING A FINAL RESOLUTION CONCERNING THE RESPONDENT'S RIGHTS TO REPRESENT ITS EMPLOYEES IN THE CIRCUMSTANCES, WE CANNOT NEVERTHELESS FAULT THE RESPONDENT FOR DELAYING ANY FURTHER ATTEMPTS TOWARDS NEGOTIATIONS WITH THE INTERVENER AS SUCH DELAYS WERE NECESSARILY OCCASIONED BY THE APPLICANT'S FILING OF THE INSTANT APPLICATION. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED IN THIS REGARD AND APPLYING THE PRINCIPLES AS SET OUT IN THE SEVEN-UP (ONTARIO) LIMITED CASE (SUPRA), WE ARE SATISFIED THAT THE RESPONDENT AND INTERVENER HAD VIRTUALLY REACHED AGREEMENT ON ALL OUTSTANDING MAJOR ITEMS WHICH WOULD HAVE CULMINATED IN A COLLECTIVE AGREEMENT BUT FOR THE INTERVENTION OF THE APPLICANT IN INITIATING THE INSTANT APPLICATION AND THAT IN THESE CIRCUMSTANCES, AN "ACTIVE BARGAINING RELATIONSHIP" (AS OPPOSED

TO A "MERE PAPER REPRESENTATION" AS SUGGESTED BY THE APPLICANT) DID EXIST AS BETWEEN THE RESPONDENT AND THE INTERVENER.

11. COUNSEL FOR THE APPLICANT NEVERTHELESS SUBMITS THAT CERTAIN "SPECIAL CIRCUMSTANCES" SURROUNDING THE EARLIER APPLICATION ARE RELEVANT TO THESE PROCEEDINGS IN WHICH THE BOARD IS ASKED TO IMPOSE A BAR. HIS PERSONAL TESTIMONY IN THIS REGARD IS AS FOLLOWS: THE LAST DAY OF THE CIRCULATION OF THE STATEMENT OF DESIRE FILED IN THE EARLIER APPLICATION WAS ON MARCH 26, 1973. HIS CLIENT MR. COTÉ THEN MAILED THE DOCUMENT THE NEXT DAY TO HIS OFFICE IN TORONTO. HOWEVER, COUNSEL FOR THE APPLICANT DID NOT ACTUALLY RECEIVE THE DOCUMENT UNTIL MARCH 29, 1973, WHEREUPON HE PROCEEDED TO FILE THAT APPLICATION WITH THE BOARD ON APRIL 3, 1973. THE MATTER SUBSEQUENTLY CAME ON FOR HEARING BEFORE THE BOARD IN TIMMINS ON MAY 10, 1973. THE BOARD RELEASED THE COUNT AT THIS TIME WHICH INDICATED THAT (AFTER DEDUCTING AN "OVERLAP" OF 21 NAMES APPEARING ON A COUNTERMANDING DOCUMENT) ONLY 54 OF THE NAMES APPEARING ON THE STATEMENT OF DESIRE CORRESPONDED TO THE 114 NAMES APPEARING ON THE LIST OF EMPLOYEES AS SUBMITTED BY THE INTERVENER. WHEN IT THUS BECAME OBVIOUS THAT THE APPLICANT WAS THEREFORE IN A DISMISSAL POSITION, COUNSEL FOR THE APPLICANT FURTHER TESTIFIED THAT HE MADE FURTHER INQUIRIES IN THIS REGARD. THESE INQUIRIES REVEALED THAT SEVEN NAMES APPEARING ON THE STATEMENT OF DESIRE WERE "LOST", THAT IS TO SAY, DID NOT APPEAR ON THE INTERVENER'S LIST OF EMPLOYEES AND THAT THIS WAS DUE TO THE FACT THAT THESE SEVEN EMPLOYEES HAD LEFT THEIR EMPLOYMENT WITH THE INTERVENER SOMETIME DURING THE INTERVAL BETWEEN MARCH 26 AND APRIL 2, 1973. HE SUGGESTED THAT, HAD THE APPLICANT FILED IT APPLICATION ON MARCH 27, 1973, THESE SEVEN NAMES WOULD HAVE APPEARED ON THE INTERVENER'S LIST OF EMPLOYEES, WHICH THEN WOULD HAVE GIVEN THE APPLICANT THE NECESSARY PERCENTAGE REQUIRED FOR A VOTE. COUNSEL FOR THE APPLICANT FURTHER TESTIFIED THAT IN ORDER TO PREVENT A SIMILAR SITUATION FOR DEVELOPING IN THE INSTANT APPLICATION WHICH HE FILED IN TORONTO ON MAY 17, 1973, TWO DAYS FOLLOWING THE BOARD'S DECISION DISMISSING THE INITIAL APPLICATION, HE TOOK THE NECESSARY STEPS TO ENSURE THAT HIS CLIENT MR. COTÉ HAD SIMULTANEOUSLY COMPLETED THE CIRCULATION OF THE STATEMENT OF DESIRE IN CHAPLEAU. REGARDING THE INSTANT APPLICATION, COUNSEL FOR THE APPLICANT SPECIFICALLY DREW TO OUR ATTENTION THE FACT THAT MORE EMPLOYEES HAD SIGNED THE STATEMENT OF DESIRE THAN WAS THE CASE IN THE INITIAL APPLICATION AND THAT, MOREOVER, THERE WAS NO COUNTERMANDING DOCUMENT AS WAS THE CASE IN THE INITIAL APPLICATION.

12. THE BOARD HAS CAREFULLY REVIEWED THE REPRESENTATIONS OF THE PARTIES CONCERNING THE ISSUE AS TO WHETHER THESE CIRCUMSTANCES SURROUNDING THE EARLIER APPLICATION, AS ATTESTED TO BY COUNSEL FOR THE APPLICANT, SHOULD BE RECOGNIZED BY THIS BOARD AS CONSTITUTING "SPECIAL CIRCUMSTANCES" UPON WHICH WE SHOULD DECLINE TO EXERCISE OUR DISCRETION TO RAISE A BAR TO THE INSTANT APPLICATION. IN OUR OPINION, THE BOARD IN THE EARLIER APPLICATION, HAS DISPOSED OF THE ISSUE OF REPRESENTATION ON ITS MERITS, AS IS EVIDENT IN ITS DECISION IN THAT MATTER DATED MAY 15, 1973. THIS IS NOT, FOR EXAMPLE, AKIN TO THE SITUATION WHERE THROUGH A "TECHNICAL IRREGULARITY" AN APPLICANT IS VICTIMIZED IN ITS FAILURE TO

MEET THE REQUIREMENTS OF THE COUNT IN VIEW OF THE RELEVANT LEGISLATION (SEE THE DUPONT OF CANADA LIMITED CASE OLRB M.R. NOVEMBER, 1967) OR WHERE, DUE TO THE APPLICANT'S IGNORANCE OF THE BOARD'S PROCEDURE, IT HAD FAILED TO CALL WITNESSES TO TESTIFY IN SUPPORT OF THE STATEMENT OF DESIRE. (SEE THE SOO DAIRIES LIMITED CASE [1971] OLRB M.R. 439). RATHER, WE FIND THAT THE APPLICANT'S "ERROR" IN THE EARLIER APPLICATION, NAMELY IN FAILING TO TAKE INTO ACCOUNT THE PASSAGE OF TIME AS NECESSITATED BY THE MAIL DELIVERY SERVICE FROM CHAPLEAU TO TORONTO, IS MORE ANALOGOUS TO THE "ERROR" COMMITTED BY A TRADE UNION IN FILING "STALE" MEMBERSHIP CARDS IN A PRIOR APPLICATION. IN THE CASE, UPON A SUBSEQUENT APPLICATION, WHEREIN UP-DATED MEMBERSHIP CARDS HAD BEEN FILED, THE BOARD HAS NEVERTHELESS REFUSED TO TREAT SUCH AN ERROR AS FALLING WITHIN THE CATEGORY OF "SPECIAL CIRCUMSTANCES" THUS AVOIDING THE PRINCIPLES AS SET OUT ABOVE. (SEE THE WINDSOR LUMBER LTD. CASE, 58 CLC ¶18,104). IN THE RESULT, THEREFORE AND HAVING REVIEWED THE BOARD'S JURISPRUDENCE IN THIS REGARD, WE ARE NOT PREPARED TO ACCEPT THE SITUATION AS SET OUT IN PARAGRAPH #11 HEREIN AS CONSTITUTING "SPECIAL CIRCUMSTANCES" UPON WHICH WE SHOULD IN THE EXERCISE OF OUR DISCRETION REFUSE TO IMPOSE A BAR.

13. ALTHOUGH COUNSEL FOR THE INTERVENER CONCEDES THAT THERE HAS BEEN AN EFFECTIVE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER, HE URGES THAT THE BOARD TAKE COGNIZANCE OF THE VIEWS OF THE MAJORITY OF THE EMPLOYEES WHO HAVE INDICATED THEIR OPPOSITION TO THE RESPONDENT. IN THIS REGARD, HE IS FURTHER SUPPORTED BY COUNSEL FOR THE APPLICANT WHO DREW TO THE BOARD'S ATTENTION THE FACTS AS SET OUT IN PARAGRAPH #6 HEREIN, NAMELY THAT THE MAJORITY OF THE EMPLOYEES WERE NOT PERMITTED TO PARTICIPATE IN THE RATIFICATION VOTE. IN THEREFORE BALANCING THE RIGHTS OF THE EMPLOYEES WITH THE EQUALLY IMPORTANT CONSIDERATION OF STABILITY IN COLLECTIVE BARGAINING, WE ADOPT THE REASONING IN THIS REGARD AS SET OUT BY THE BOARD IN THE CANADIAN SEALRIGHT CO. LTD. CASE 59 CLC ¶18,157 WHERE AT PAGE 1808 IT IS STATED:

"THE PHRASE 'CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP' IN THAT CASE (E.G. THE TRINIDAD LEASEHOLDS CASE) REFERS TO THE ACTIVITY OF THE UNION IN BARGAINING, NOT TO THE DEGREE OF SUPPORT WHICH THE UNION MAY ENJOY AMONG THE EMPLOYEES IN THE BARGAINING UNIT. OTHERWISE, THE PRINCIPLE OF THE CASE WOULD NOT BE APPLICABLE IN ANY SITUATION UNLESS THE RESPONDENT UNION WAS ABLE TO DEMONSTRATE THAT IT DID HAVE THE SUPPORT OF A SUBSTANTIAL NUMBER OF THE EMPLOYEES. IN OTHER WORDS, THE ONUS WOULD BE THROWN ON THE INCUMBENT UNION TO PROVE THAT IT CONTINUES TO HAVE THE SUPPORT OF THE EMPLOYEES, AN APPROACH TO THE PROBLEM

CLEARLY INCONSISTENT WITH THE POLICY EMBODIED IN SECTIONS 40 AND 41 (NOW SECTIONS 48 AND 49) OF THE ACT. WE ARE NOT CALLED UPON IN THIS PROCEEDING TO DETERMINE WHETHER THE RESPONDENT UNION WOULD OR WOULD NOT BARGAIN OR WHETHER IT COULD OR COULD NOT COMPLY WITH THE PROVISIONS OF SECTION 12 OF THE ACT. AT THIS STAGE ONE CAN ONLY SPECULATE AS TO THE UNION'S ABILITY TO ENTER INTO OR TO CARRY THROUGH NEGOTIATIONS SUCCESSFULLY. HAVING REGARD TO THESE CONSIDERATIONS, WE ARE OF THE OPINION THAT, SINCE A REASONABLE OPPORTUNITY WAS NOT AFFORDED TO THE RESPONDENT, BETWEEN THE DATE OF THE DISMISSAL OF THE FIRST APPLICATION AND THE DATE OF THE FILING OF THE INSTANT APPLICATION, TO DEMONSTRATE ITS ABILITY TO BARGAIN, THE APPLICATION SHOULD BE DISMISSED."

14. HAVING THEREFORE CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED TOGETHER WITH THE ABLE REPRESENTATIONS OF COUNSEL FOR THE REPRESENTATIVE PARTIES THERETO, WE FIND THAT THE RESPONDENT TRADE UNION HAS NOT HAD A REASONABLE OPPORTUNITY SINCE THE FINAL DISPOSITION OF THE EARLIER APPLICATION AND THE FILING OF THE INSTANT APPLICATION TO BARGAIN WITH THE INTERVENER COMPANY. THE BOARD, THEREFORE, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 92(2)(1) OF THE ACT, IS OF THE OPINION THAT IT SHOULD REFUSE TO ENTERTAIN THE INSTANT APPLICATION. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: NOVEMBER 19, 1973.

I DISSENT. I HAVE HAD AN OPPORTUNITY OF REVIEWING THE DECISION OF THE MAJORITY BUT REGRET THAT I AM UNABLE TO EXERCISE THE DISCRETION WHICH IT EXERCISED UNDER THE PROVISIONS OF SECTION 92(2)(1) OF THE LABOUR RELATIONS ACT. INDEED, IN VIEW OF THE MANDATORY PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT, I NOT ONLY REFRAIN FROM EXERCISING A DISCRETION IN THE MANNER OF THE MAJORITY BUT QUARE WHETHER, IN FACT, SUCH DISCRETION SHOULD BE EXERCISED BY THE BOARD.

THE APPLICATION IS MADE FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT UNDER THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT. THE PERTINENT PORTIONS OF SECTION 49 ARE STATED AS FOLLOWS:

"(1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER

ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY, SUBJECT TO SECTION 53, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE BARGAINING UNIT."

(THE PROVISIONS OF SECTION 53 DO NOT IMPEDE THE BRINGING OF THIS APPLICATION).

"(3) UPON AN APPLICATION UNDER SUBSECTION 1 OR 2, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 92 THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION, AND, IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTES, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED."

IT IS CLEAR THAT IF THE APPLICANT IS SUCCESSFUL IN HIS APPLICATION, THE BARGAINING RIGHTS OF THE TRADE UNION ARE NOT AUTOMATICALLY TERMINATED, BUT RATHER THE BOARD WOULD, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

AT THE HEARINGS BEFORE THE BOARD, THE BOARD ENTERTAINED EVIDENCE AND ARGUMENT BOTH WITH RESPECT TO THE QUESTION OF THE TIMELINESS OF THIS APPLICATION, AND WITH THE QUESTION OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE IN SUPPORT OF THIS APPLICATION. THIS EVIDENCE WAS HEARD AS MUCH FROM THE QUESTION OF EXPEDIENCY AS FROM ANYTHING ELSE. I MENTION THIS SPECIFICALLY INASMUCH AS I DO NOT WISH IT TO BE SUGGESTED THAT BY ENTERTAINING THE EVIDENCE IN SUPPORT OF THE APPLICATION, THE MAJORITY HAD PRECLUDED ITSELF FROM MAKING A FINDING UNDER THE PROVISIONS OF SECTION 92(2)(1), IF ITS FINDING IS CORRECT IN ALL OTHER RESPECTS.

IN SUPPORT OF THE APPLICATION, EVIDENCE WAS PRESENTED THAT THERE WERE 119 EMPLOYEES IN THE BARGAINING UNIT AND THAT 88 NAMES ON THE STATEMENT OF DESIRE CORRESPONDED TO THE NAMES OF EMPLOYEES IN THE BARGAINING UNIT.

FROM THE EVIDENCE GIVEN IN SUPPORT OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE, I HAVE ABSOLUTELY NO HESITATION IN FINDING THAT NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION.

IT FOLLOWS THEREFORE THAT, IN MY OPINION, HAVING REGARD TO THE MANDATORY PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT AND THE EVIDENCE ADDUCED IN SUPPORT OF THIS APPLICATION, THE APPLICATION MUST SUCCEED AND I WOULD HAVE ORDERED THAT THE BOARD CONDUCT A REPRESENTATION VOTE, TO SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

IT REMAINS FOR ME, HOWEVER, TO DISCUSS THE FINDING BY MY COLLEAGUES TO EXERCISE THEIR DISCRETION UNDER THE PROVISIONS OF SECTION 92(2)(1) OF THE ACT, AND REFUSE TO ENTERTAIN THE APPLICATION ON THE BASIS OF AN EXISTING "ACTIVE BARGAINING RELATIONSHIP" BETWEEN THE RESPONDENT AND THE INTERVENER.

THE EVIDENCE ADDUCED BY THE RESPECTIVE PARTIES IS REASONABLY CLEAR AND CONSISTENT. THE RESPONDENT TRADE UNION WAS CERTIFIED BY THE BOARD ON MARCH 23, 1972. AFTER SEVERAL MEETINGS BETWEEN THE PARTIES, THE APPOINTMENT OF A CONCILIATION OFFICER, A "NO BOARD" REPORT FROM THE MINISTER, AND FURTHER MEETINGS WITH A MEDIATOR, A RATIFICATION MEETING WAS HELD ON MARCH 19, 1973. THE EVIDENCE INDICATES THAT WHILE SOME 109 EMPLOYEES IN THE BARGAINING UNIT ATTENDED THE RATIFICATION MEETING, 69 OF SUCH EMPLOYEES WERE REQUIRED TO REMOVE THEMSELVES BEFORE THE TAKING OF THE VOTE BECAUSE THEY WERE NOT MEMBERS OF THE RESPONDENT UNION. THEIR FATE WAS DETERMINED BY THE REMAINING 40 EMPLOYEES OF THE RESPONDENT UNION AND THE MAJORITY OF THE LATTER GROUP VOTED TO RATIFY A PROPOSED COLLECTIVE AGREEMENT. SUBSEQUENT TO SUCH VOTE FURTHER CORRESPONDENCE TOOK PLACE BETWEEN THE PARTIES ALTHOUGH A COLLECTIVE AGREEMENT WAS NEVER ACHIEVED.

APPROXIMATELY 2 WEEKS AFTER THE AFOREMENTIONED "RATIFICATION VOTE", AN APPLICATION WAS MADE BEFORE THE BOARD UNDER THE PROVISIONS OF SECTION 49 OF THE ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE UNION. EVIDENCE WAS ADDUCED TO INDICATE THAT BECAUSE OF INADVERTANCE AND/OR A CHANGE IN THE COMPOSITION OF THE BARGAINING UNIT THROUGH QUITTINGS OR LAY-OFFS, LESS THAN 50 PER CENT OF THE EMPLOYEES, AT THE DATE FIXED BY THE BOARD FOR THE DETERMINING OF THE "COUNT", HAD VOLUNTARILY SIGNIFIED THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION. THE BOARD DISMISSED THE APPLICATION, BUT SIGNIFICANTLY DID NOT IMPOSE ANY BAR UPON THE UNSUCCESSFUL APPLICANT AT THE TIME OF SUCH DISMISSAL. THE INSTANT APPLICATION ENSUED.

THE RESULT OF THE DISMISSAL OF THIS APPLICATION IS THAT THE COMPANY IS NOW BOUND TO BARGAIN WITH A TRADE UNION WHICH, AT LEAST PRIMA FACIE, NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT. ADDITIONALLY, AND EQUALLY AS IMPORTANT, THE EMPLOYEES WILL BE FORCED TO RECEIVE REPRESENTATION FROM A TRADE UNION WHICH, PRIMA FACIE, THEY DO NOT SUPPORT, AND TO POSSIBLY BE EMPLOYED UNDER THE TERMS OF A COLLECTIVE AGREEMENT RATIFIED BY ONLY A SMALL PERCENTAGE OF THEIR NUMBER. I MAKE THIS OBSERVATION FULLY COGNIZANT OF THE

REASONING OF THE BOARD IN THE CANADIAN SEALRIGHT CO. LTD. CASE 59 CLLC
 718,157.

ACCORDINGLY, HAVING REGARD TO THE SPECIFIC AND MANDATORY PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT, AND THE PARTICULAR AND PECULIAR CIRCUMSTANCES OF THIS CASE. I AM UNABLE TO EXERCISE THE DISCRETION EXERCISED BY MY COLLEAGUES AND INSTEAD WOULD HAVE ORDERED A REPRESENTATION VOTE TO SATISFY MYSELF THAT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

4536-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) v. TORONTO ZENITH CONTRACTING LIMITED (RESPONDENT) v. GROUP
OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE AND M.J. REILLY FOR THE APPLICANT; LAWRENCE S. CRACKOWER FOR THE RESPONDENT; G.W. HATELY, Q.C. AND MARTIN FINGERHUT FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 14, 1973.

1. THIS MATTER WAS LISTED FOR HEARING BY THE BOARD ON NOVEMBER 9, 1973. IMMEDIATELY AFTER THE HEARING WAS CALLED TO ORDER THE BOARD RAISED CERTAIN MATTERS OF A PROCEDURAL NATURE WITH COUNSEL APPEARING FOR THE PARTIES. THE FIRST SUCH ISSUE WHICH WAS DEALT WITH WAS THE MATTER THAT A REQUEST HAD BEEN MADE BY THE RESPONDENT IN THIS CASE IN A PREVIOUS APPLICATION TO IMPOSE A BAR THAT WOULD AFFECT THE BRINGING OF THE PRESENT APPLICATION. THE BOARD POINTED OUT THAT THE QUESTION OF THAT BAR WAS BEFORE ANOTHER PANEL OF THE BOARD IN ANOTHER CASE AND THAT ANY PROCEEDINGS IN THIS MATTER WOULD BE CONTINGENT UPON ANY DECISION WITH RESPECT TO THAT REQUEST IN THE OTHER CASE.

2. THE BOARD THEN POINTED OUT THAT THE PRESENT CASE INVOLVED CERTAIN DIFFICULT PROBLEMS WITH RESPECT TO THE APPROPRIATE BARGAINING UNIT WHICH FORMED THE SUBJECT MATTER OF A SERIES OF SIMILAR CASES, AND WHICH MATTER WAS ALSO BEFORE ANOTHER PANEL OF THE BOARD. THE BOARD THEN PROCEEDED TO CANVAS THE PARTIES APPEARING BEFORE IT AS TO THE POSSIBILITY OF PROCEEDING WITH SOME PORTION OF THIS APPLICATION AT THE HEARING. IN THE COURSE OF CONSIDERING THESE MATTERS IT BECAME APPARENT THAT BEFORE DEALING WITH THE PETITION FILED BY THE GROUP OF OBJECTING EMPLOYEES IT WOULD BE NECESSARY FOR THE BOARD TO DETERMINE THE APPROPRIATE BARGAINING UNIT AND THE LIST OF EMPLOYEES INCLUDED THEREIN. ACCORDINGLY, THE BOARD GAVE THE FOLLOWING DECISION AT THE HEARING:

WE FIND THAT WE CANNOT ACCEPT THE AGREEMENT
 OF THE APPLICANT AND THE RESPONDENT

CONCERNING THE EXCLUSION FROM THE BARGAINING UNIT CLAIMED BY THE RESPONDENT. THE PROBLEMS RAISED IN DETERMINING THE APPROPRIATE BARGAINING UNIT IN THE PRESENT CASE ARE EXTREMELY DIFFICULTY, AND WE WOULD POINT OUT THAT THE DETERMINATION OF THE APPROPRIATE BARGAINING UNIT IS A STATUTORY DUTY IMPOSED ON THE BOARD BY SECTION 6 OF THE ACT WHICH CANNOT BE IGNORED. WE ARE THUS DRIVEN TO THE CONCLUSION THAT SUCH A DECISION ON THE APPROPRIATE BARGAINING UNIT MIGHT MATERIALLY AFFECT THE COUNT IN THE PRESENT CASE. THAT BEING THE CASE WE ARE NOT PREPARED TO PROCEED WITH DEALING WITH THE PETITION FILED BY THE OBJECTING EMPLOYEES UNTIL THE MATTER OF THE APPROPRIATE BARGAINING UNIT IS DETERMINED.

IN VIEW OF THE FOREGOING AND IN ORDER TO FACILITATE THE DISPOSITION OF THIS CASE WE ARE OF THE VIEW THAT THIS APPLICATION SHOULD BE REFERRED TO THE PANEL OF THE BOARD DEALING WITH THE BARGAINING UNIT IN THE SIMILAR CASE INVOLVING THE APPLICANT.

4156-73-M: M & G EXCAVATING & DEMOLITION (LONDON) LTD. (EMPLOYER) V. TEAMSTERS LOCAL UNION NO. 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: G. PEMBLETON FOR THE EMPLOYER; I. J. THOMSON AND E. WINEGARDEN FOR THE TRADE UNION.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL: NOVEMBER 15, 1973.

. . .

2. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE SAID ACT TO APPOINT A CONCILIATION OFFICER.

3. THE EVIDENCE DISCLOSES THAT THE TRADE UNION ENTERED INTO A COLLECTIVE AGREEMENT WITH M & G CARTAGE (LONDON) LTD. (HEREINAFTER REFERRED TO AS "M & G CARTAGE") WITH A TERMINATION DATE OF APRIL 30, 1971 AND WHICH COLLECTIVE AGREEMENT WAS SUBSEQUENTLY AUTOMATICALLY RENEWED.

4. HOWEVER, THE EVIDENCE OF MR. PEMBLETON, THE FORMER PRESIDENT OF 'M & G CARTAGE' DISCLOSES THAT THIS COMPANY CEASED DOING BUSINESS DURING THE FALL OF 1969, AT WHICH TIME ALL OF THE COMPANY'S EQUIPMENT WAS APPLIED TOWARDS SATISFYING ITS OUTSTANDING DEBTS. IT APPEARS THAT UP TO THIS POINT, APPROXIMATELY EIGHTY-FIVE PER CENT OF THE COMPANY'S BUSINESS WAS IN THE CARTAGE AND DELIVERY FIELD. BY NOTICE DATED JULY 6, 1973, THE CERTIFICATE OF INCORPORATION OF 'M & G CARTAGE' HAS BEEN CANCELLED AND A DECLARATION OF ITS DISSOLUTION FOR DEFAULT IN FILING ANNUAL RETURNS HAS BEEN ISSUED PURSUANT TO THE PROVISIONS OF THE BUSINESS CORPORATION ACT.

5. MR. PEMBLETON FURTHER TESTIFIED THAT DURING THE FALL OF 1972, HE WAS INSTRUMENTAL IN SETTING UP A BUSINESS UNDER THE NAME OF M & G EXCAVATING & DEMOLITION (LONDON) LTD. (HEREINAFTER REFERRED TO AS 'M & G EXCAVATING') AND A CERTIFICATE OF INCORPORATION WAS OBTAINED IN THIS REGARD IN DECEMBER OF 1972. HE ALSO STATED THAT AT NO TIME DID 'M & G EXCAVATING' PARTICIPATE IN CARTAGE OR DELIVERY WORK BUT WAS MAINLY INVOLVED IN CONSTRUCTION WORK. IT WOULD FURTHER APPEAR THAT OF THE FOUR DRIVERS PRESENTLY IN THE EMPLOY OF 'M & G EXCAVATING' ONLY ONE HAD BEEN PREVIOUSLY EMPLOYED BY 'M & G CARTAGE'.

6. HAVING THEREFORE CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, AND TAKING INTO ACCOUNT THE FACT THAT THE ACTIVITIES OF 'M & G EXCAVATING' ESSENTIALLY EMBRACE THOSE IN THE CONSTRUCTION FIELD WHEREAS THOSE OF 'M & G CARTAGE' WERE PRIMARILY IN RELATION TO THE CARTAGE FIELD, AND THEREFORE AS SUCH ARE UNRELATED ACTIVITIES, WE ARE NOT PREPARED IN THE ABSENCE OF ANY COGENT ARGUMENT SUBMITTED BY THE APPLICANT IN THIS RESPECT, TO FIND THAT AN EMPLOYER SUCCESSOR SITUATION AS CONTEMPLATED BY THE LABOUR RELATIONS ACT HAS DEVELOPED IN THE CIRCUMSTANCES. ACCORDINGLY, WE FIND THAT 'M & G EXCAVATING' HAS NOT ACQUIRED ANY BARGAINING RIGHTS, BENEFITS OR DUTIES WHICH MAY HAVE ACCRUED TO 'M & G CARTAGE'.

7. THE BOARD'S ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IN THIS MATTER IS THEREFORE - NO, THE MINISTER DOES NOT HAVE THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER IN THE CIRCUMSTANCES.

DECISION OF BOARD MEMBER O. HODGES: NOVEMBER 15, 1973.

I DISSENT

1. MR. GEORGE PEMBLETON WAS PRESIDENT OF THE DEFUNCT M & G CARTAGE (LONDON) LIMITED. HIS TESTIMONY IS THAT THIS COMPANY WAS IN THE BUSINESS OF CARTAGE AND EXCAVATING. HE HAD THREE DUMP TRUCKS AND FIVE SMALL STAKE BODY DELIVERY TRUCKS. THE BUSINESS, HE SAID, WAS MORE OF A DELIVERY SERVICE, 85% OF IT HAVING BEEN CARTAGE. MR. PEMBLETON TESTIFIED HE DISCONTINUED M & G (LONDON) OPERATION IN THE FALL OF 1969. HE WAS NOT BANKRUPT,

ALTHOUGH THE EQUIPMENT WAS APPLIED TOWARD SATISFYING OUTSTANDING DEBT. THE UNION WAS NOT NOTIFIED OF THE SAID DISCONTINUANCE OF THE BUSINESS WHEN THE LAST REMITTANCE OF UNION DUES WAS MADE.

2. THE COLLECTIVE AGREEMENT WITH M & G CARTAGE (LONDON) LTD. THAT WAS IN EFFECT AT THE TIME OF THE LAY OFF OR TERMINATION OF THE UNION MEMBERS WAS EFFECTIVE FROM 1 MAY 1968 TO 30 APRIL 1971, WHEN IT WAS AUTOMATICALLY RENEWED ACCORDING TO ITS TERMS. THERE WAS A FURTHER ANNUAL RENEWAL ON 30 APRIL 1972. BY REGISTERED MAIL DATED 6 MARCH 1973 THE UNION NOTIFIED 'M & G CARTAGE (LONDON), RR#4, LONDON, ONTARIO, ATTENTION: MR. GEORGE PEMBLETON', THAT IT WISHED TO ENTER NEGOTIATIONS TO AMEND THE COLLECTIVE AGREEMENT. THERE WAS NO ACKNOWLEDGMENT FROM THE COMPANY AND THE REQUEST FOR THE APPOINTMENT OF A CONCILIATION OFFICER FOLLOWED ON 20 JUNE 1973. THE REFERENCE FROM THE MINISTER DATED 8 AUGUST 1973 TO THE BOARD UNDER S. 96 OF THE ACT GIVES THE CURRENT NAME AND ADDRESS OF THE EMPLOYER AS 'M & G EXCAVATING AND DEMOLITION, RR#4, LONDON 54, ONTARIO, ATTENTION: MR. GEORGE PEMBLETON'.
3. MR. PEMBLETON FURTHER TESTIFIED THAT HE "STARTED UP AS M & G EXCAVATING AND DEMOLITION IN THE FALL OF LAST YEAR" AND THAT HE "GOT A CHARTER IN SEPTEMBER OF 1972". HE SAID THAT HE "HIRED ONE DUMP TRUCK DRIVER BACK" AND AGAIN MADE REFERENCE TO THAT ACTION AS HAVING "RE-INSTATED" THE DRIVER. THE NEW COMPANY HAS THREE DUMP TRUCK DRIVERS AND A DRIVER ON DEMOLITION.
4. IT IS CLEAR FROM THE EVIDENCE THAT THE OPERATION OWNERSHIP AND CONTROL OF BOTH COMPANIES AT ALL MATERIAL TIMES WAS AND IS IN THE PERSON OF MR. GEORGE PEMBLETON. A MINOR PART OF THE BUSINESS OF THE FIRST COMPANY HAS BECOME PART OF THE BUSINESS OF THE SECOND COMPANY. THE MEMBERS OF THE UNION DID THE SAME WORK FOR THE FIRST COMPANY AS IS REQUIRED BY THE SECOND COMPANY. NOTABLE IS THE SIGNIFICANT ADMISSION CONCERNING THE "RE-INSTATED" DUMP TRUCK DRIVER. THE PREMISES OF BOTH COMPANIES BEGIN WITH 'M & G', AN IMPORTANT LINK IN THE CONTINUUM OF THE BUSINESS. A TELEPHONE LISTING, THE IDENTIFICATION ON TRUCKS AND THE OBVIOUS CONVENIENCE OF THE USE OF A SHORT FORM OF ADDRESS, 'M & G' COMMON TO BOTH IS AN OBVIOUS CONNECTION BETWEEN THE DISCONTINUED BUSINESS AND THE NEW BUSINESS.
5. THERE IS A LAPSE OF THREE YEARS, FROM THE FALL OF 1969 WHEN M & G CARTAGE IS SAID TO HAVE BEEN DISCONTINUED, UNTIL THE FALL OF 1972 WHEN M & G EXCAVATING STARTED UP. THE COLLECTIVE AGREEMENT REMAINED IN EFFECT AND CON-

TINUED WITHOUT INTERRUPTION UNTIL THE CERTIFICATE OF INCORPORATION WAS CANCELLED ON 13 JUNE 1973. THE AGREEMENT WAS CLEARLY IN EFFECT WHEN M & G EXCAVATING WAS FORMALLY INCORPORATED 20 DECEMBER 1972, SUBSEQUENT TO WHICH NOTICE TO BARGAIN WAS GIVEN BY THE UNION ON 6 MARCH 1973.

6. THE PREAMBLE TO THE LABOUR RELATIONS ACT SETS FORTH THE INTENT AND THRUST OF THE LEGISLATION; IT IS:

"WHEREAS IT IS IN THE PUBLIC INTEREST OF THE PROVINCE OF ONTARIO TO FURTHER HARMONIOUS RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES BY ENCOURAGING THE PRACTICE AND PROCEDURE OF COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS AS THE FREELY DESIGNATED REPRESENTATIVES OF EMPLOYEES."

THE OPERATIVE WORDS IN THE PREAMBLE ARE "PUBLIC INTEREST" AND "ENCOURAGING THE PRACTICE AND PROCEDURE OF COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS". THE APPOINTMENT OF A CONCILIATION OFFICER IS THE OBVIOUS, AND IN THE CIRCUMSTANCES OF THIS CASE, A NECESSARY STEP REQUIRED TO MEET THE INTENT OF THE LEGISLATION.

7. IT IS MY VIEW THAT S. 1(4) OF THE ACT APPLIES HERE. IT IS:

"WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT. R.S.O. 1970, c. 232, s. 1."

THERE WERE NO DOCUMENTS PRODUCED IN EVIDENCE RELATING TO THE DISPOSITION OF ASSETS OF M & G CARTAGE, AS CLAIMED BY MR. PEMBLETON. HE TESTIFIED THAT THE PERSON WHO HAD THE RECORDS AND WHO WAS SUPPOSED TO BE PRESENT AT THE HEARING WAS IN THE HOSPITAL, AND THESE PAPERS WERE THEREFORE NOT AVAILABLE. THE BOARD ENQUIRED OF MR. PEMBLETON WHETHER IN THESE CIRCUMSTANCES HE WANTED AN ADJOURNMENT. HE REPLIED THAT HE DIDN'T WANT AN ADJOURNMENT "AND I DON'T WANT A GOD-DAMN UNION EITHER! "

8. CONSIDERING ALL OF THE AVAILABLE EVIDENCE IN THE

PRESENT MATTER AND THE DECISION OF THE BOARD IN THE CANAC SHOCK ABSORBERS LIMITED CASE, BOARD FILE 3071-72-R, AND THE CONTENTION ARGUED THERE BY THE APPLICANT UNION AS TO THE APPLICATION OF S. 1(4) IN THAT CASE, IT IS MY OPINION THAT THE REASONING IN THE CANAC CASE SHOULD BE APPLIED IN THE CIRCUMSTANCE OF THE PRESENT REFERENCE TO THE BOARD. THE CONTENTION REFERRED TO APPEARS IN PARA. 2 OF THE CANAC CASE AS FOLLOWS:

2. "THE APPLICANTS CONTENDED, IN THE ALTERNATIVE, THAT ACME AND CANAC FALL WITHIN THE PROVISIONS OF SECTION 1(4). OF THE LABOUR RELATIONS ACT AND THAT THE BOARD SHOULD TREAT THEM AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THE ACT. THE APPLICANTS SUBMITTED THAT THE RESULT OF SUCH ACTION BY THE BOARD WOULD BE THAT THE APPLICANTS' BARGAINING RIGHTS WITH RESPECT TO ACME, WOULD BE APPLICABLE TO BOTH CORPORATIONS, AS CONSTITUTING ONE EMPLOYER AND THAT THEREFORE THERE WOULD BE NO NEED FOR A DECLARATION OF SUCCESSORSHIP AND THAT, FURTHER, THE BARGAINING RIGHTS OF THE APPLICANTS ARE UNAFFECTED BY THE CORPORATE TRANSACTIONS UNDER REVIEW."

9. IN THE PRESENT CASE THE MAJORITY OF THIS PANEL OF THE BOARD SAY IN PARA. 6 THAT THE ACTIVITIES OF THE TWO COMPANIES ARE UNRELATED. HOWEVER, ARTICLE 16 - WAGES OF THE COLLECTIVE AGREEMENT STIPULATES THE CLASSIFICATION OF JOBS COVERED BY THE COLLECTIVE AGREEMENT AND THE WAGE RATES, IE. TRUCK DRIVERS AND FLOAT OPERATORS. THESE ARE JOBS THAT ARE OBVIOUSLY NECESSARY TO THE OPERATION OF M & G EXCAVATING. THE AGREEMENT FURTHER PROVIDES IN ARTICLE 16.02 - WAGES THAT IF NEW CLASSIFICATIONS ARE ESTABLISHED THE PARTIES WILL NEGOTIATE. THE EVIDENCE AS I UNDERSTAND IT CLEARLY ESTABLISHES RELATED ACTIVITIES AT THE MATERIAL TIME. THE RELATIONSHIP OF THESE TWO COMPANIES ARE ALSO ALIKE IN OTHER IMPORTANT ASPECTS OF THE CANAC CASE, AS EXPRESSED BY THE BOARD IN THAT CASE AS FOLLOWS:

22. "CANAC IS PRESENTLY ENGAGED IN THE PRODUCTION OF SHOCK ABSORBERS AND TO THAT EXTENT IS CARRYING ON PART OF THE BUSINESS FORMERLY OPERATED BY ACME. THE OPERATION TAKES PLACE IN THE SAME AREA OF THE PLANT AS WAS USED BY ACME IN THE PRODUCTION OF SHOCK ABSORBERS. THE SUPERINTENDENT OF THE ACME SHOCK ABSORBERS DEPARTMENT AND ELEVEN OR SO OTHER SUPERVISORY STAFF OF

THAT COMPANY, OCCUPY SIMILAR POSTS IN THE NEW COMPANY. CANAC IS, IN EFFECT, THE SHOCK ABSORBER DEPARTMENT OF ACME INCORPORATED BUT OTHERWISE CONTINUING IN MUCH THE SAME AS WAS BEFORE INCORPORATION."

10. THE CANAC CASE ALSO DEALT WITH THE APPLICATION OF THE NEW S. 1(4) OF THE ACT AS FOLLOWS:

28. "THE ARGUMENT WAS ALSO MADE BY THE INTERVENER THAT IF SECTION 1(4) APPLIES AT ALL, IT APPLIES ONLY FOR THE PURPOSES OF THE ACT. THE SPECIFIC PURPOSE OF THE PRESENT APPLICATION WOULD BE FOR A DECLARATION UNDER SECTION 55 THAT A SALE HAD TAKEN PLACE BETWEEN ACME AND CANAC. IT WOULD FOLLOW THEREFORE, IT WAS ARGUED, THAT IF SECTION 1(4) BE APPLIED, SECTION 55 COULD NOT APPLY BECAUSE ACME AND CANAC, BEING TREATED AS ONE EMPLOYER, THERE COULD NOT BE A PURCHASER AND A VENDOR IN THE SALE."

29. "THE BOARD FINDS ITSELF UNABLE TO ACCEPT THE ARGUMENT THAT THE SECTIONS ARE MUTUALLY EXCLUSIVE IN EVERY CASE. (SECTION 1(4) SIMPLY AUTHORIZES THE BOARD TO TREAT THE DESIGNATED ENTITIES AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THE ACT. THERE IS, OF COURSE, NO SUGGESTION THAT ANY MERGER OR AMALGAMATION OF THE ENTITIES IS DEEMED TO TAKE PLACE UNDER THAT SECTION. INDEED, IT IS EVIDENT THAT THERE MUST BE AT LEAST TWO VIABLE ENTITIES AT ALL TIMES IN ORDER FOR THE BOARD TO BE ABLE TO USE SECTION 1(4). THE FACT THAT ONE COMPANY MAY SELL PART OF ITS BUSINESS TO ANOTHER COMPANY, WHERE BOTH REMAIN SUBSISTING COMPANIES, DOES NOT NECESSARILY MEAN THAT THEY CANNOT, NOTWITHSTANDING THAT THEY MAY BE VENDOR AND PURCHASER WITHIN THE MEANING OF SECTION 55, BE TREATED AT THE SAME TIME, IF THE CONDITIONS OF SECTION 1(4) BE OTHERWISE MET, AS ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. THE CORPORATE ENTITIES REMAIN DISTINCT CORPORATION CAPABLE OF INDEPENDENT COMMERCIAL TRANSACTIONS, EVEN THOUGH THEY MAY BE TREATED AS ONE EMPLOYER UNDER THE ACT."

11. THERE WERE CERTAIN AGREED PRE-CONDITIONS TO THE APPLICATION OF S. 1(4) IN THE CANAC CASE, AND THESE WERE REFERRED TO AS FOLLOWS:

36. "IT IS COMMON GROUND THAT THERE ARE THREE PRECONDITIONS TO BE MET BEFORE THE BOARD MAY TREAT TWO OR MORE CORPORATIONS AS CONSTITUTING ONE EMPLOYER. IT SHOULD BE NOTED, INCIDENTALLY, THAT THE PRESENCE OF THOSE CONDITIONS DOES NOT IN ANY WAY COMPEL THE BOARD TO TREAT THE CORPORATIONS CONCERNED AS ONE EMPLOYER. THE SECTION LEAVES TO THE BOARD'S DISCRETION THE DECISION AS TO WHETHER TO TREAT A NUMBER OF EMPLOYERS AS CONSTITUTING ONE EMPLOYER, EVEN IN THE PRESENCE OF THE PRECONDITIONS."
37. "THE PRECONDITIONS ARE THAT THERE BE MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION INVOLVED; THAT THE CORPORATIONS, ETC. ARE UNDER COMMON CONTROL OR COMMON DIRECTION AND THAT ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES BE CARRIED ON BY THE EMPLOYERS CONCERNED."
38. "THERE IS NO DOUBT UPON THE EVIDENCE HEREIN THAT MORE THAN ONE CORPORATION IS INVOLVED. IT IS, FURTHER, CONCEDED BY THE RESPONDENT THAT ACME AND CANAC ARE UNDER COMMON CONTROL AND COMMON DIRECTION. WE WOULD ADD THAT, IN THE OPINION OF THE BOARD, THESE COMMON ELEMENTS COVER, IN THE PRESENT CASE, THE MATTER OF LABOUR RELATIONS."

THESE PRE-CONDITIONS APPEAR IN THE PRESENT CASE.

12. THE QUESTION OF WHETHER M & G CARTAGE WAS "CARRYING ON" A BUSINESS AT THE MATERIAL TIME IS A QUESTION TO BE CONSIDERED. THAT THE EVIDENCE CONCERNING M & G CARTAGE IS DEFICIENT IN THIS REGARD IS SOLELY BY THE CHOICE OF PEMBLETON SINCE HE REFUSED THE OPPORTUNITY FOR AN ADJOURNMENT AFFORDED HIM FOR THE PURPOSE OF BRINGING THE NECESSARY WITNESS AND DOCUMENTS. IN THE CANAC CASE THE BOARD DEALT WITH THE "CARRYING ON" OF THE BUSINESSES AS FOLLOWS:
40. "THE DIFFICULTY LIES IN THE QUESTION AS TO WHETHER ACME, IN THE CIRCUMSTANCES, CAN BE SAID TO BE "CARRYING ON" A BUSINESS OR ACTIVITY AT ALL. IN OTHER WORDS, CAN IT BE SAID THAT A CORPORATION, WHICH IS PLAINLY IN THE PROCESS OF LIQUIDATION, IS AT THE SAME TIME "CARRYING ON" THAT BUSINESS WITHIN THE MEANING OF SECTION 1(4) OF THE ACT. IT IS NOT DISPUTED, OF COURSE, THAT ACME HAS NOT SURRENDERED ITS CHARTER."

44. "THE BOARD FURTHER FINDS THAT BECAUSE OF THE CONTINUING USE OF MACHINERY IN THE COMPLETION OF WORK IN PROGRESS IN ORDER TO FILL OUTSTANDING ORDERS WHICH REMAINED AT AUGUST 30, 1971 INCLUDING WORK ON SHOCK ABSORBERS, WITH A VIEW AT LEAST TO CUTTING LOSSES ON THESE ITEMS IF NOT INDEED TURNING A PROFIT THAT ACME WAS CARRYING ON AN ACTIVITY OR BUSINESS ALBEIT WITH A VIEW TO EVENTUAL LIQUIDATION."
13. IN MY VIEW THE BOARD IS REQUIRED TO TREAT MATTERS BEFORE IT TO GIVE EFFECT TO THE PURPOSE OF THE ACT, AS EXPRESSED BY THE PREAMBLE. FOR THAT REASON, I CONSIDER THE GAP IN THE EVIDENCE LEFT BY PEMBLETON IN FAILING TO BRING EVIDENCE RELATING TO THE WINDUP AT M & G CARTAGE AS ALLOWING THE NECESSARY INFERENCE TO BE DRAWN BY THE BOARD, I.E. THAT THERE WAS "CARRYING ON" BY THE M & G CARTAGE BUSINESS. THE CONCLUSION OF THE BOARD IN THE CANAC CASE IS GIVEN AS FOLLOWS:
45. "THE CONCLUSION IS UNAVOIDABLE THAT THE ACTIVITIES OF CANAC AND ACME DURING THE PERIOD FROM AUGUST 30, 1972 UP TO AND INCLUDING THE HEARING OF THE APPLICATION ARE RELATED ACTIVITIES. THIS BECOMES ABUNDANTLY CLEAR WHEN ACCOUNT IS TAKEN OF THE FACT THAT THE LIQUIDATION OPERATIONS OF THE ACME AND THE COMMENCEMENT OF OPERATIONS BY CANAC IN THE FORMER'S SHOCK ABSORBER DEPARTMENT PRODUCING A LIKE PRODUCT ALL TOOK PLACE UNDER THE GUIDANCE AND CONTROL OF SEAWAY MULTI-CORP LIMITED WHICH IN THE EXERCISE OF ITS OVERALL POWER REALLY ONLY SLIPPED ITS HAND OUT OF THE ACME GLOVE INTO THE LESS ELABORATE CANAC GLOVE."
46. "ALL THE PRECONDITIONS REQUIRED BEFORE THE BOARD MAY EXERCISE ITS DISCRETION AS TO WHETHER TO TREAT THE TWO CORPORATIONS, ACME AND CANAC, AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT ARE THEREFORE PRESENT AND HAVE BEEN PRESENT SINCE THE MOMENT WHEN THE FIRST EMPLOYEE WAS HIRED UNDER THE NAME OF CANAC. THE BOARD THEREFORE FINDS THAT ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES WERE, AT ALL TIMES MATERIAL TO THIS APPLICATION, CARRIED ON BY OR THROUGH ACME AND CANAC UNDER COMMON CONTROL AND COMMON DIRECTION WITHIN THE MEANING OF SECTION 1 SUBSECTION (4) OF THE LABOUR RELATIONS ACT."
14. MY CONCLUSION CONCERNING THE PRESENT REFERENCE TO THE BOARD FROM THE MINISTER MAY BE PARAPHRASED FROM THE

ABOVE PARAS. 45 AND 46. THAT IS TO SAY, THE OPERATIONS OF M & G CARTAGE SUCH AS THEY MAY HAVE BEEN, AND THE COMMENCEMENT OF OPERATIONS BY M & G EXCAVATING, WERE IN PART ONE OF A KIND IN THE LIKE SERVICE OF EXCAVATING, AND IT ALL TOOK PLACE UNDER THE GUIDANCE AND CONTROL OF THE OWNER OF BOTH BUSINESSES, MR. PEMBLETON. IN THE EXERCISE OF HIS OVERALL POWER THIS REALLY MEANT SHIPPING HIS HAND OUT OF THE M & G CARTAGE GLOVE INTO THE M & G EXCAVATING GLOVE.

15. ALL THE PRECONDITIONS REQUIRED FOR THE BOARD TO EXERCISE ITS DISCRETION TO TREAT THE TWO BUSINESSES AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT ARE PRESENT AND HAVE BEEN PRESENT SINCE THE MOMENT WHEN THE FIRST TRUCK DRIVER WAS HIRED UNDER THE NAME OF M & G EXCAVATING, AS I SEE THE EVIDENCE. I THEREFORE FIND THAT ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES WERE, AT ALL TIMES MATERIAL TO THIS REFERENCE, CARRIED ON BY OR THROUGH M & G CARTAGE AND M & G EXCAVATING UNDER COMMON CONTROL AND COMMON DIRECTION WITHIN THE MEANING OF SECTION 1 SUBSECTION (4) OF THE LABOUR RELATIONS ACT. THE REPLY TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THEREFORE - "YES", THE MINISTER DOES HAVE THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER AS REQUESTED BY THE APPLICANT TRADE UNION.

4024-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. DAAL SPECIALTIES (CANADA) LTD. (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND F.W. MURRAY.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER D.B. ARCHER: NOVEMBER 16, 1973.

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2. THE EXAMINER IN THIS MATTER HAS REPORTED TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND THE LIST OF EMPLOYEES IN THE BARGAINING UNIT. THE PARTIES HAVE BY LETTER MADE REPRESENTATIONS TO THE BOARD ON THE EXAMINER'S REPORT. HOWEVER, NO HEARING HAS BEEN REQUESTED CONCERNING THIS REPORT. THE BARGAINING UNIT FOR WHICH THIS APPLICATION HAS BEEN MADE CONCERNS A GROUP OF OPPOSING EMPLOYEES OF THE RESPONDENT. THE DELINEATION OF THE BARGAINING UNIT IS A MATTER OF CONTENTION BETWEEN THE PARTIES. THEY HAVE, HOWEVER, REDUCED THE AREA OF THE DISPUTE TO THE ISSUE OF WHETHER TWO CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT.

3. THE TWO CLASSIFICATIONS STILL IN DISPUTE BETWEEN THE PARTIES ARE SWITCHBOARD RECEPTIONIST AND PURCHASING CLERK I. THE RESPONDENT TAKES THE POSITION THAT ELIZABETH HOPE, WHO IS CLASSIFIED AS SWITCHBOARD RECEPTIONIST IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, SUCH AS TO EXCLUDE THAT CLASSIFICATION FROM THE BARGAINING UNIT, AND THAT EVELYN PENDER CLASSIFIED AS PURCHASING CLERK I EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT SUCH AS TO EXCLUDE THAT CLASSIFICATION FROM THE BARGAINING UNIT. SINCE EACH OF THESE TWO EMPLOYEES IS THE ONLY EMPLOYEE IN THE DISPUTED CLASSIFICATION THE REPORT OF THE EXAMINER DEALS WITH BOTH OF THE EMPLOYEES IN QUESTION.

4. DEALING FIRST WITH ELIZABETH HOPE WHO IS CLASSIFIED AS SWITCHBOARD RECEPTIONIST IT IS APPARENT FROM THE EXAMINER'S REPORT THAT ALTHOUGH CLASSIFIED AS RECEPTIONIST AND ALTHOUGH SHE IS PHYSICALLY LOCATED IN A SEPARATE RECEPTION AREA AT A SWITCHBOARD, IN FACT, THE MAJORITY OF HER TIME IS SPENT AS AN OVERLOAD TYPIST FOR BOTH THE PURCHASING DEPARTMENT AND THE PERSONNEL DEPARTMENT. IT IS FURTHER CLEAR THAT THE LARGEST PORTION OF THIS OVERLOAD TYPING (BETWEEN 80 AND 90 PERCENT) IS WORK DONE IN CONNECTION WITH THE PERSONNEL DEPARTMENT. IT IS IN RELATION TO THIS WORK DONE FOR THE PERSONNEL DEPARTMENT THAT IT IS CLAIMED BY THE RESPONDENT THAT SHE IS ENGAGED IN A CLASSIFICATION WHICH DEALS WITH MATTERS OF A CONFIDENTIAL NATURE. IT IS CLEAR FROM THE EXAMINER'S REPORT THAT THE BULK OF HER DUTIES IN THIS REGARD DEAL WITH ROUTINE TYPING ASSIGNMENTS SUCH AS REQUISITIONS AND INSURANCE CLAIMS. SHE DOES NOT, HOWEVER, TYPE MEMOS CONCERNING THE CONDUCT THAT SHOULD BE TAKEN BY THE RESPONDENT IN RELATION TO EMPLOYEES OR TO COLLECTIVE BARGAINING. THERE IS SOME DISPUTE AS TO WHETHER SHE HAS ACCESS IN THE NORMAL COURSE OF EVENTS TO CONFIDENTIAL PERSONNEL INFORMATION. HOWEVER, THE REPORT INDICATES THAT ALTHOUGH SHE DOES FROM TIME TO TIME REFER TO THE MAIN PERSONNEL FILES THE INFORMATION SHE NORMALLY REQUESTS IS KEPT IN A SEPARATE AND LESS COMPLETE FILING SYSTEM. ON THE BASIS OF THE EXAMINER'S REPORT IT IS CLEAR THAT MOST OF HER TYPING FOR THE PERSONNEL DEPARTMENT DOES NOT FALL INTO THE CATEGORY OF "MATTERS RELATING TO LABOUR RELATIONS" SUCH AS TO BRING HER WITHIN THE LANGUAGE OF SECTION 1(3)(B) OF THE ACT.

5. THE ONLY ASPECT OF HER WORK WHICH DOES RELATE TO LABOUR RELATIONS CONCERNS HER TYPING OF THE ANSWERS TO GRIEVANCES WHICH ARE SENT TO THE UNION AND THE EMPLOYEE CONCERNED. SINCE THIS IS A MATTER WHICH IS MADE KNOWN TO THE UNION WE ARE OF THE VIEW THAT IT CANNOT BE REGARDED AS A MATTER THAT IS CONFIDENTIAL TO THE EMPLOYER WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. WE ARE THEREFORE OF THE VIEW THAT ELIZABETH HOPE CLASSIFIED AS A SWITCHBOARD RECEPTIONIST IS AN EMPLOYEE WITHIN THE BARGAINING UNIT.

6. TURNING TO THE CLASSIFICATION OF PURCHASING CLERK I, THE EMPLOYEE IN THIS CLASSIFICATION IS EVELYN PENDER. THE EXAMINER'S REPORT INDICATES THAT HER DUTIES IN THIS REGARD CONCERN THE MAKING OF REQUISITIONS AND PURCHASE ORDERS AND THEN THE CHECKING OF INVOICES FOR VARIOUS ITEMS

ORDERED THROUGH THE PURCHASING DEPARTMENT. SHE OBTAINS QUOTES FROM VARIOUS VENDORS AND DEALS WITH VARIOUS VENDORS WITH RESPECT TO THEIR ACCOUNTS. HOWEVER, THERE IS A LIMIT OF \$100.00 PLACED ON ANY PURCHASE REQUISITION THAT SHE CAN AUTHORIZE AS A RESULT OF EXERCISING HER OWN INDEPENDENT DISCRETION.

7. THE RESPONDENT'S POSITION IS THAT THIS EXERCISE OF INDEPENDENT AUTHORITY IS SUFFICIENT TO EXCLUDE THIS CLASSIFICATION WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. WE FIND, HOWEVER, THAT WE CANNOT ACCEPT THIS CONTENTION. PLACED IN ITS CONTEXT THE INDEPENDENT JUDGMENT OF SUCH A PURCHASING CLERK IS SO LIMITED THAT WE ARE NOT PREPARED TO FIND THAT THE EXERCISE OF SUCH DISCRETION CONSTITUTES THE EXERCISE OF A MANAGERIAL FUNCTION WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

8. IN LIGHT OF THE ABOVE FINDINGS THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE GENERAL MANAGER, EMPLOYEES EMPLOYED IN THE EMPLOYEE-RELATIONS DEPARTMENT, TECHNICAL PERSONNEL AND INDUSTRIAL ENGINEERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER F.W. MURRAY: NOVEMBER 16, 1973.

1. I DISSENT.

2. I AM IN ACCORD WITH THE FINAL CONCLUSION OF THE MAJORITY DECISION. I DISSENT WITH THE CONCLUSIONS REACHED IN PARAGRAPH 5 DEALING WITH THE INCLUSION IN THE UNIT OF ELIZABETH HOPE.

3. I WOULD HAVE FOUND THAT BECAUSE OF THE TYPE AND TOTALITY OF THE WORK PERFORMED IN THE PERSONNEL DEPARTMENT, OUTLINED IN PART IN PARAGRAPH 4 OF THE DECISION, AND IN PARTICULAR BECAUSE OF HER OTHER DUTIES IN THE PERSONNEL DEPARTMENT WITH RESPECT TO THE TYPING OF LETTERS DEALING WITH GRIEVANCES, THAT ELIZABETH HOPE IS A PERSON EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

4. ACCORDINGLY, I WOULD HAVE AMENDED THE DESCRIPTION OF THE BARGAINING UNIT SO AS TO EXCLUDE THE POSITION HELD BY THIS PERSON, OR, IN THE ALTERNATIVE, EXCLUDED THE POSITION BY WAY OF A CLARITY NOTE ACCOMPANYING THE CERTIFICATE.

4311-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. JACKSON BUILDERS SUPPLIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND J. PARNELL DUPONT FOR THE APPLICANT; G. GEORGE JACKSON FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 20, 1973.

1. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER, THE RESPONDENT BY LETTER DATED OCTOBER 2, 1973 FILED A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IN CONNECTION WITH THE REPRESENTATION VOTE CONDUCTED IN THIS MATTER. AT THE PRE-HEARING REPRESENTATION VOTE MEETING, THE PARTIES HAD AGREED THAT THE VOTE WOULD BE CONDUCTED ON SEPTEMBER 27, 1973 OR IN THE ALTERNATIVE ON OCTOBER 4, 1973. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT ASSERTED THAT THE LETTER FROM THE REGISTRAR DATED SEPTEMBER 18, 1973 WAS NOT RECEIVED BY THE RESPONDENT UNTIL SEPTEMBER 25, 1973, WHICH DATE WAS AFTER THE ONSET OF THE QUIET PERIOD IN THIS MATTER. THE RESPONDENT ALLEGED THAT ALTHOUGH IT HAD INTENDED TO MAKE ITS POSITION KNOWN TO THE EMPLOYEES JUST PRIOR TO THE ONSET OF THE QUIET PERIOD, IT WAS UNABLE TO DO SO SINCE THE REGISTRAR'S LETTER ADVISING OF THE IMPOSITION OF THE QUIET PERIOD WAS NOT RECEIVED BY HIM UNTIL AFTER THE COMMENCEMENT OF THE QUIET PERIOD.

2. THE RESPONDENT ALSO OBJECTED TO THE VOTE ON THE GROUNDS THAT THE RESPONDENT HAD HIRED CERTAIN EMPLOYEES AS TEMPORARY REPLACEMENTS PENDING THE HIRING OF FULL TIME EMPLOYEES. THE TEMPORARY EMPLOYEES WHO WERE HIRED BY THE RESPONDENT WERE AT THAT TIME EMPLOYEES WHO WERE ON STRIKE AGAINST THE CANADA STARCH COMPANY LIMITED WHOSE PLANT WAS LOCATED APPROXIMATELY FIVE MILES FROM THE RESPONDENT'S PLANT. THE RESPONDENT ASSERTED THAT THE PRO-UNION CANADA STARCH EMPLOYEES WHO WERE HIRED AS TEMPORARY REPLACEMENTS AFFECTED THE OUTCOME OF THE VOTE.

3. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS NO MERIT IN THE RESPONDENT'S OBJECTIONS. THE REGISTRAR'S LETTER ADVISING THE PARTIES OF THE ONSET OF THE QUIET PERIOD IS NOT INTENDED AS A LICENCE TO COMMENCE ELECTIONEERING AND PROPAGANDA BUT ON THE CONTRARY IS INTENDED TO PLACE RESTRICTIONS ON SUCH ACTIVITY DURING THE 72-HOUR PERIOD IMMEDIATELY PRIOR TO THE VOTE. THE FACT THAT THE RESPONDENT WAS AWAITING THE RECEIPT OF THE REGISTRAR'S LETTER BEFORE COMMENCING ITS ELECTIONEERING AND PROPAGANDA CANNOT ADVERSELY AFFECT THE OUTCOME OF THE REPRESENTATION VOTE IN THIS MATTER. IF THE RESPONDENT WAITED UNTIL THE ELEVENTH HOUR BEFORE COMMENCING ITS ELECTIONEERING AND PROPAGANDA IT DID SO AT ITS PERIL AND THE FACT THAT THE REGISTRAR'S LETTER MAY HAVE BEEN LATE IN ARRIVING DOES NOT IMPROVE THE RESPONDENT'S POSITION. APART FROM ANY OTHER CONSIDERATION, IT IS NOTED THAT THE REGISTRAR'S LETTER WAS MAILED TO THE RESPONDENT ON SEPTEMBER 18. WHILE THE RESPONDENT ASSERTED THAT THE LETTER WAS NOT PICKED UP FROM ITS POST OFFICE BOX UNTIL OCTOBER 25, IT IS NOTED THAT THE PROVISIONS OF SECTION 102(1) WOULD CAUSE THE BOARD TO FIND THAT THE REGISTRAR'S DIRECTION WITH

RESPECT TO THE ONSET OF THE QUIET PERIOD WAS RECEIVED BY THE RESPONDENT IN THE ORDINARY COURSE OF MAIL, UNLESS THE CONTRARY WAS PROVED. IN THIS CASE THE RESPONDENT ADDUCED NO EVIDENCE TO PROVE WHEN THE MAIL WAS DELIVERED TO ITS POST OFFICE BOX. SECTION 102(3) OF THE ACT FURTHER PROVIDES THAT THE REGISTRAR'S DIRECTION IN THIS INSTANCE WOULD BE DEEMED TO HAVE BEEN RELEASED TO THE RESPONDENT ON SEPTEMBER 20, THE SECOND DAY AFTER THE DAY ON WHICH IT WAS MAILED TO THE RESPONDENT.

4. THE TEMPORARY EMPLOYEES WHO WERE HIRED BY THE RESPONDENT WHO WERE EMPLOYEES ENGAGED IN A STRIKE AT CANADA STARCH COMPANY LIMITED WERE EMPLOYEES WHO FELL WITHIN THE DESCRIPTION OF THE VOTING CONSTITUENCY IN THIS MATTER. IN ADDITION, THE RESPONDENT MADE NO CHALLENGE TO THE INCLUSION OF SUCH EMPLOYEES ON THE VOTERS' LIST. IN THESE CIRCUMSTANCES, THE BOARD CANNOT GIVE EFFECT TO THE RESPONDENT'S OBJECTION TO THE FACT THAT THESE EMPLOYEES WERE PERMITTED TO VOTE.

5. FOR THE FOREGOING REASONS, THE BOARD FINDS THAT EFFECT MUST BE GIVEN TO THE RESULTS OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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4644-73-R: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS AFL CIO CLC (APPLICANT) V. RCA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: S. T. GOUDGE AND G. PATTINSON FOR THE APPLICANT; A. J. CLARK, Q.C., P. R. DAVIS AND L. WARD FOR THE RESPONDENT; NO ONE FOR THE OBJECTOR.

DECISION OF THE BOARD:

NOVEMBER 28, 1973.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR A "TAG-END" BARGAINING UNIT WHICH INCLUDES EMPLOYEES OF THE RESPONDENT IN ITS MANUFACTURING ENGINEERING DEPARTMENT AT PRESCOTT WHO ARE CLASSIFIED AS METHODS ENGINEER. THE OFFICE EMPLOYEES OF THE RESPONDENT ARE CURRENTLY REPRESENTED BY INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AND ITS LOCAL 551 UNDER A COLLECTIVE AGREEMENT WHICH REMAINS IN EFFECT UNTIL JULY 26, 1974. THE RECOGNITION CLAUSE OF THIS AGREEMENT READS IN PART AS FOLLOWS: "THE COMPANY RECOGNIZES THE UNION AS THE SOLE BARGAINING AGENT IN RESPECT TO ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES...SAVE AND EXCEPT...THE PERSONS IN THE FOLLOWING CLASSIFICATIONS: TEST ENGINEER, METHODS ENGINEER... SO LONG AS THE FUNCTION OR CAPACITY IN WHICH SUCH PERSONS ARE EMPLOYED EXCLUDE THEM UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, PROVINCE OF ONTARIO."

2. APART FROM ANY ARGUMENT WHICH COULD BE MADE THAT THE PARTIES TO THE COLLECTIVE AGREEMENT HAVE AGREED THAT THE METHODS ENGINEERS WERE, AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO, EXCLUDED BY THE LABOUR RELATIONS ACT, AND THEREFORE THE PARTIES ARE UNABLE TO UNILATERALLY REPUDIATE SUCH AGREEMENT UNLESS IT CAN BE ESTABLISHED BY THE UNION THAT THEIR DUTIES AND RESPONSIBILITIES HAVE SUBSTANTIALLY CHANGED SINCE THE COLLECTIVE AGREEMENT WAS ENTERED INTO, THE RESPONDENT POINTED OUT THAT AT THE TIME THE UNION WAS CERTIFIED TO REPRESENT THE OFFICE EMPLOYEES THE BOARD EXAMINED THE INCUMBENTS OF THE CLASSIFICATION OF METHODS ENGINEER AND DETERMINED THAT THEY WERE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY EXERCISED MANAGERIAL FUNCTIONS. HOWEVER THAT MAY BE, EVEN IF IT CAN NOW BE ESTABLISHED THAT THE "FUNCTION OR CAPACITY IN WHICH SUCH PERSONS ARE EMPLOYED" NO LONGER EXCLUDE THEM UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, SUCH PERSONS WOULD THEN BE COVERED BY THE PROVISIONS OF THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AND ITS LOCAL 551, IN WHICH EVENT THIS APPLICATION WOULD BE UNTIMELY. ONE ADDITIONAL FACTOR WHICH THE BOARD MUST CONSIDER IN THESE PROCEEDINGS IS THAT LOCAL 551 IS NOT A PARTY TO THIS APPLICATION. IF LOCAL 551 SEEKS CLARIFICATION OF THE STATUS OF THE METHODS ENGINEERS, ANY RELIEF AVAILABLE TO IT WOULD HAVE TO BE SOUGHT PURSUANT TO THE PROVISIONS OF SECTION 95(2) OF THE ACT.

3. FOR ALL OF THE FOREGOING REASONS, WE FIND THAT THE BOARD HAS NO JURISDICTION TO PROCEED WITH THE INSTANT CASE AS PRESENTLY FRAMED AND THIS APPLICATION IS THEREFORE DISMISSED.

4427-73-U: LOCAL 12-L, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) V. PARR'S PRINT AND LITHO LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HAROLD F. CALEY AND ALLAN WHEATCROFT FOR THE APPLICANT; W. GIBSON GRAY, Q.C., VICTOR PARR AND S. ALTMAN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN, AND BOARD MEMBER J. E. C. ROBINSON, Q.C.:
NOVEMBER 21, 1973.

1. THE NAME "PARR'S PRINT AND LITHO LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "PARR'S PRINT AND LITHO LTD."

2. THE APPLICANT HAS APPLIED TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED BREACH OF SECTION 70(2) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT APPLIED FOR CERTIFICATION ON JUNE 19, 1973 AND

WAS CERTIFIED BY THE BOARD ON JULY 12, 1973. THE EVIDENCE IS THAT ON OR ABOUT JANUARY 15, 1973, THE NOTICE OF THE APPLICATION FOR CERTIFICATION WAS RECEIVED BY THE EMPLOYER FROM THE BOARD. BY LETTER DATED JULY 25, 1973, THE APPLICANT GAVE NOTICE TO BARGAIN TO THE RESPONDENT UNDER THE PROVISIONS OF SECTION 13 OF THE LABOUR RELATIONS ACT.

4. THE MATTER UPON WHICH THE APPLICATION IS BASED INVOLVES A CHANGE IN THE HOURS OF WORK IN THE RESPONDENT'S PREPARATION DEPARTMENT. THE CHANGE COMPLAINED OF OCCURRED ON OR ABOUT JULY 30, 1973 WHICH WAS SUBSEQUENT TO THE DATE UPON WHICH NOTICE UNDER SECTION 13 OF THE ACT WAS DELIVERED. A QUESTION AROSE AS TO THE PROPRIETY OF THE USE OF SECTION 70(2) BY THE RESPONDENT RATHER THAN SECTION 70(1) OF THE ACT. THE BOARD LEAVES THIS ISSUE FOR THE MOMENT.

5. THE FACTS ARE THAT ON OR ABOUT JANUARY 15, 1973, THAT IS PRIOR TO THE APPLICATION FOR CERTIFICATION, THE HOURS OF WORK IN THE PREPARATION DEPARTMENT WERE CHANGED ON AN EXPERIMENTAL BASIS SO AS TO CONFORM TO THE HOURS USED IN THE RESPONDENT'S PRESS ROOM. THESE WERE 8.00 A.M. TO 4.00 P.M. WITH A 20 MINUTE PAID MEAL BREAK AND NO SHUT DOWN FOR A COFFEE BREAK. THIS WAS DONE ON THE REQUEST OF THE EMPLOYEES OF THE PREPARATION DEPARTMENT.

6. ON OR ABOUT JULY 30, 1973, THE RESPONDENT CHANGED THE WORKING HOURS IN THE PREPARATION DEPARTMENT BACK TO 8.00 A.M. TO 4.30 P.M. WITH HALF AN HOUR UNPAID MEAL BREAK BETWEEN 12.15 P.M. AND 12.45 P.M. AND TWO 10-MINUTE COFFEE BREAKS. THESE WERE THE HOURS WHICH HAD OBTAINED IN THE PREPARATION DEPARTMENT PRIOR TO THE CHANGE OF JANUARY 15, 1973.

7. HAVING REGARD TO THE EVIDENCE, THE BOARD FINDS THAT AT THE TIME UNION APPLIED FOR CERTIFICATION AND AT THE TIME THE UNION GAVE NOTICE TO BARGAIN UNDER SECTION 13 OF THE ACT, THE HOURS OF WORK IN THE PREPARATION DEPARTMENT WERE ON AN EXPERIMENTAL BASIS ONLY AND WERE THEREFORE CLEARLY SUBJECT TO CHANGE AS WELL AFTER AS BEFORE THE NOTICE REFERRED TO IN EITHER SUBSECTION (1) OR SUBSECTION (2) OF SECTION 70 OF THE ACT.

8. IN THE CIRCUMSTANCES, THE BOARD FINDS THAT WHETHER THE APPLICATION BE CONSIDERED AS FALLING UNDER SECTION 70(1) OR SECTION 70(2) OF THE ACT, THE CHANGES IN THE HOURS OF WORK HAVING BEEN MADE IN ACCORDANCE WITH A PREDETERMINED SCHEME WOULD NOT CONSTITUTE A VIOLATION OF EITHER OF THE SUBSECTIONS OF SECTION 70 WHICHEVER MIGHT BE SAID TO PROPERLY APPLY IN THE CIRCUMSTANCES. IN THE RESULT, IT BECOMES UNNECESSARY TO DECIDE THE LATTER ISSUE.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: NOVEMBER 21, 1973.

HAVING CAREFULLY REVIEWED THE EVIDENCE AND THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT IN SUPPORT

OF THEIR RESPECTIVE POSITIONS IN THIS MATTER, I AM SATISFIED THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A PROVINCIAL JUDGE.

ACCORDINGLY, I WOULD HAVE GRANTED CONSENT TO THE APPLICANT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

"IN OR ABOUT THE WEEK COMMENCING JULY 13, 1973, FOLLOWING THE RECEIPT OF NOTICE THAT THE APPLICANT HAD APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION, THE RESPONDENT DID UNLAWFULLY ALTER RIGHTS AND PRIVILEGES OF EMPLOYEES WITHOUT THE CONSENT OF THE APPLICANT CONTRARY TO SECTION 70(1) OF THE LABOUR RELATIONS ACT, R.S.O. 1970, CH. 232."

3736-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. V. HALLAM LTD. (RESPONDENT) V. LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (INTERVENER #1) V. INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, LOCAL UNION 1891 (INTERVENER #2) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #3).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND W. STEFANOVICH FOR THE APPLICANT; G. R. BAKER FOR THE RESPONDENT; R. KOSKIE AND A. H. BURTON FOR INTERVENER #1; R. KOSKIE FOR INTERVENER #2; T. NEIL FOR INTERVENER #3.

DECISION OF THE BOARD: NOVEMBER 23, 1973.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THE MATTERS REFERRED TO IN PARAGRAPH FOUR OF THE DECISION OF THE BOARD IN THIS MATTER DATED SEPTEMBER 26, 1973, AND ON THE MATTER RAISED BY COUNSEL FOR LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION (HEREINAFTER REFERRED TO AS "LOCAL 97") IN HIS LETTER TO THE BOARD DATED NOVEMBER 14, 1973.

2. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THE AUTHORITY AND COMPETENCE OF INDIVIDUALS TO REPRESENT THE APPLICANT AND LOCAL 97 HAVE BEEN BROUGHT INTO ISSUE. THE BOARD WILL ENTERTAIN THESE ISSUES. THE ONUS OF ESTABLISHING THE LACK OF AUTHORITY OR COMPETENCE IN THE CIRCUMSTANCES OF THIS APPLICATION RESTS WITH THE PARTY WHICH SEEKS TO ASSERT THE PROPOSITION WHICH IS NOT SELF-EVIDENT, I.E., WHICH SEEKS TO ASSERT THE LACK OF AUTHORITY OR CAPACITY. SEE ROBINS V. NATIONAL TRUST Co. LTD. [1927] A11.E.R. REP. 73; AND HALSBURY, LAWS OF ENGLAND (3RD ED). VOL. 21, P. 267.

3. THE BOARD FINDS THAT THE APPLICANT AND LOCAL 97 HAVE, WITH RESPECT TO THE QUESTION OF COMPETENCE OR AUTHORITY, ALLEGED IRREGULAR CONDUCT WITHIN THE MEANING OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, THE APPLICANT AND LOCAL 97 ARE DIRECTED TO FILE FORTHWITH PARTICULARS OF THEIR ALLEGATIONS WITH THE BOARD. THE APPLICANT AND LOCAL 97 SHALL FILE SUCH PARTICULARS, OR, IN THE EVENT THAT THE APPLICANT AND LOCAL 97 ARE OF THE OPINION THAT THEY HAVE ALREADY FILED SUCH PARTICULARS, THEY SHALL PLAINLY AND PRECISELY REFER TO SUCH PARTICULARS IN THE MATERIAL THUS FAR FILED.

4. THE BOARD WILL ALSO PERMIT LOCAL 97 TO ADDUCE EVIDENCE IN SUPPORT OF ITS ALLEGATION THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT, OR, TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS DECISION THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT, AS THE CASE MAY BE.

5. LOCAL 97 IS DIRECTED TO FILE FORTHWITH PARTICULARS OF ITS ALLEGATIONS CONCERNING THE LACK OF STATUS OF THE APPLICANT AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT, OR, IN THE EVENT THAT LOCAL 97 IS OF THE OPINION THAT IT HAS ALREADY FILED SUCH PARTICULARS, IT SHALL PLAINLY AND PRECISELY REFER TO SUCH PARTICULARS IN THE MATERIAL THUS FAR FILED.

6. THE MATTER IS REFERRED TO THE REGISTRAR FOR LISTING FOR CONTINUATION OF HEARING.

3645-73-R: INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCALS 72, 192 AND 199 (APPLICANT) v. ROBES ROYALE LIMITED (RESPONDENT) v. SHAKER MANUFACTURING COMPANY LIMITED (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: WALLACE FRAM FOR THE APPLICANT; JOHN P. SANDERSON, G. SHAKER AND S.C. BERNARDO FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD:

NOVEMBER 27, 1973.

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2. THIS IS AN APPLICATION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT WHICH ALLEGES THAT THE APPLICANT HOLDS BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT WHICH ARISES AS A RESULT OF A SALE OF BUSINESS BY THE INTERVENER TO THE RESPONDENT WHICH TOOK PLACE ON OR ABOUT APRIL 1, 1973.

3. IT IS EVIDENT THAT A SALE OF BUSINESS DID TAKE PLACE. THE

EVIDENCE DEMONSTRATES THAT THE INTERVENER TRANSFERRED ITS LEASE TO THE RESPONDENT, THAT THERE WAS A SALE OF MACHINERY AND INVENTORY, THAT EITHER THE MAJORITY OR ALL OF THE EMPLOYEES TRANSFERRED OR MOVED FROM ONE COMPANY TO THE OTHER AND THAT MEMBERS OF MANAGEMENT ALSO TRANSFERRED. THE MEMBERS OF MANAGEMENT WERE IN EFFECT THE OWNERS OF THE VENDOR COMPANY AND THEN BECAME SHAREHOLDERS IN THE PURCHASER COMPANY. IN THESE CIRCUMSTANCES THERE IS A CONTINUUM OF THE BUSINESS SUCH AS IS ENVISIONED IN AIRCRAFT METAL SPECIALTIES LIMITED (1970) OLRB MTHLY. REP. 702.

4. THE RESPONDENT ALLEGES THAT ITS BUSINESS HAS SUBSTANTIALLY CHANGED IN CHARACTER FROM THE PREVIOUS BUSINESS OF THE VENDOR COMPANY. THE VENDOR COMPANY HAD BEEN ENGAGED IN THE MANUFACTURE OF WOMEN'S APPAREL AND IN 1972 IT MANUFACTURED SPORTS WEAR AND A SMALLER PERCENTAGE OF LOUNGE WEAR. IN ADDITION, A CONSIDERABLE PERCENTAGE OF ITS WORK INVOLVED SUB-CONTRACTS FOR OTHER MANUFACTURERS. THE PURCHASER COMPANY DOES ONLY A SMALL PERCENTAGE OF CONTRACT WORK FOR OTHERS, AND IN ADDITION IT MANUFACTURES A GREATER PERCENTAGE OF LOUNGE WEAR THAN THE VENDOR COMPANY HAD MANUFACTURED.

5. IN OUR VIEW THE ESSENCE OF THE VENDOR'S BUSINESS WAS THE MANUFACTURE OF WOMEN'S APPAREL AND THE ESSENCE OF THE PURCHASER'S BUSINESS IS ALSO THE MANUFACTURE OF WOMEN'S APPAREL. THE SAME SEWING MACHINE OPERATORS ARE USED TO PERFORM THE VERY SAME TASKS THAT HAD PREVIOUSLY BEEN PERFORMED BY THE VENDOR COMPANY. IT IS THE SAME MANUFACTURING OPERATION, AND THE FACT THAT A DIFFERENT ITEM OF APPAREL IS NOW MANUFACTURED DOES NOT MEAN THAT THERE HAS BEEN A SUBSTANTIAL CHANGE IN THE CHARACTER OF THE BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT. NOR IN THESE CIRCUMSTANCES DOES THE ALTERATION OF THE PERCENTAGE OF SUBCONTRACTING CONSTITUTE A SUBSTANTIAL CHANGE IN THE CHARACTER OF THE BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE ACT.

6. THE NEXT ISSUE INVOLVES THE QUESTION AS TO WHO HOLDS THE BARGAINING RIGHTS. WE ARE IN AGREEMENT WITH COUNSEL FOR THE RESPONDENT THAT THE COLLECTIVE AGREEMENT MIGHT HAVE BEEN BETTER FRAMED. HOWEVER, IT DOES APPEAR FROM THE EVIDENCE THAT THE MEMORANDUM OF AGREEMENT SIGNED IN 1972 INCORPORATED BY REFERENCE THE COLLECTIVE AGREEMENT ENTERED INTO ON AUGUST 1, 1969, AND THAT THE 1972 MEMORANDUM OF AGREEMENT IS A COLLECTIVE AGREEMENT BETWEEN THE PARTIES THERETO WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

7. HAVING REGARD TO THE EVIDENCE AND ALL THE CIRCUMSTANCES WE THEREFORE DETERMINE THAT THE RESPONDENT IS BOUND BY THE MEMORANDUM OF AGREEMENT ENTERED INTO WITH THE APPLICANT ON AUGUST 14, 1972, AND WE ARE NOT PREPARED TO DECLARE OTHERWISE.

4017-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) v. HEMBRUFF AND DAMBROWITZ (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND TOM COPE FOR THE APPLICANT; R. D. PERKINS AND F. S. HEMBRUFF FOR THE RESPONDENT; NO ONE APPEARED FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 29, 1973.

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3. IN A DECISION DATED OCTOBER 9, 1973, THE BOARD, AFTER CONSIDERING THE REPORT OF THE EXAMINER DATED SEPTEMBER 13, 1973 AND THE TIMELY REPRESENTATIONS THEREON, HELD THAT EDMUND GAUTHIER, REAL POISSON AND NORBERT BERUBE WERE EMPLOYED BY THE RESPONDENT, HEMBRUFF AND DAMBROWITZ, AS CARPENTERS. IN MAKING THIS FINDING, THE BOARD STATED THAT IT HAD NOT TAKEN INTO ACCOUNT THE ALLEGATIONS OF FACT MADE BY HEMBRUFF & DAMBROWITZ LIMITED IN ITS LETTER TO THE BOARD DATED SEPTEMBER 28, 1973. THE BOARD ALSO NOTED IN ITS DECISION DATED OCTOBER 9, 1973, THAT THE RESPONDENT HAD NOT ALLEGED THAT IT WAS NOT AFFORDED FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES BEFORE THE EXAMINER.

4. IN A LETTER DATED OCTOBER 23, 1973, COUNSEL FOR THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 9, 1973. THIS APPLICATION WAS LISTED FOR HEARING FOR THE PURPOSE OF ENTERTAINING THIS APPLICATION FOR CERTIFICATION, THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION AND TO PERMIT THE RESPONDENT TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS DECISION DATED OCTOBER 9, 1973.

5. ALTHOUGH DULY NOTIFIED OF THE HEARING, THE OBJECTORS DID NOT ATTEND AT THE HEARING. THERE IS ACCORDINGLY NO EVIDENCE BEFORE THE BOARD RESPECTING THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO FIND THAT THE STATEMENT OF DESIRE WEAKENS THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

6. AT THE HEARING, COUNSEL FOR THE APPLICANT AND THE RESPONDENT SOUGHT TO INTRODUCE EVIDENCE RESPECTING THE IDENTITY OF THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION. COUNSEL CONCEDED THAT THIS EVIDENCE COULD HAVE BEEN PRESENTED BEFORE THE EXAMINER AT THE TIME HE CONVENED HIS MEETING.

7. THE PARTIES WERE GIVEN AN OPPORTUNITY TO PRESENT EVIDENCE BEFORE THE EXAMINER AND DID SO TO THE EXTENT SET FORTH IN THE REPORT OF THE EXAMINER. THE APPLICANT AND THE RESPONDENT, WHILE SEEKING TO PLACE THEIR OWN ADDITIONAL EVIDENCE BEFORE THE BOARD, EACH TOOK THE POSITION THAT THE OTHER OUGHT NOT TO BE PERMITTED TO PLACE ADDITIONAL EVIDENCE BEFORE THE BOARD. THE BOARD HAS CONSIDERED ARGUMENT OF THE PARTIES AND

WILL NOT PERMIT EITHER THE APPLICANT OR THE RESPONDENT TO ADDUCE ADDITIONAL EVIDENCE BEFORE IT. THE REPORT OF THE EXAMINER ESTABLISHES THAT HEMBRUFF AND DAMBROWITZ WAS THE EMPLOYER OF EDMUND GAUTHIER, REAL POISSON AND NORBERT BERUBE ON THE DATE OF THE MAKING OF THIS APPLICATION.

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11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4693-73-R: PATRICK MCKEON AND OTHER EMPLOYEES OF HIRAM WALKER & SONS LIMITED (APPLICANT) V. THE DISTILLERY WORKERS' UNION LOCAL 61, WALKERVILLE, ONTARIO, AFFILIATED WITH THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFFILIATED WITH THE AFL-CIO, CLC-OFL (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: J. I. LASKIN FOR THE APPLICANT; A. E. GOLDEN AND M. A. GREEN FOR THE RESPONDENT; H. T. STROSBURG ON BEHALF OF WITNESSES TIGHE, DICKSON, WAY, LEGAULT, MACPHAIL AND JONES.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER A. MAIN: NOVEMBER 29, 1973.

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2. THIS IS AN APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS FILED PURSUANT TO THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT.

3. HAVING CAREFULLY REVIEWED THE EVIDENCE AS ADDUCED AT THE HEARING OF THIS MATTER ON NOVEMBER 23, 1973, WE ARE SATISFIED THAT THIS APPLICATION IS TIMELY, HAVING BEEN FILED WITHIN THE LAST TWO MONTHS OF THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT (EXHIBIT #1) ENTERED INTO BETWEEN THE RESPONDENT AND THE EMPLOYER, HIRAM WALKER & SONS LIMITED, PURSUANT TO THE PROVISIONS OF SECTION 49(2) OF THE SAID ACT. WE ARE FURTHER SATISFIED THAT NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE SAID BARGAINING UNIT HAVE "VOLUNTARILY" (IN THE SENSE THAT THERE HAS BEEN NO MANAGEMENT PARTICIPATION) PLACED THEIR SIGNATURES UPON THE THIRTY-SEVEN PETITION DOCUMENTS FILED WITH THE BOARD IN SUPPORT OF THIS APPLICATION. IT IS ALSO CLEAR, THAT AS OF THE DATE OF THE FILING OF THIS APPLICATION ON NOVEMBER 2, 1973, BARGAINING RIGHTS WERE HELD BY THE RESPONDENT LOCAL UNION AND THAT AT NO TIME DID SUCH RIGHTS ACCRUE TO ITS PARENT, THE "DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA" (HEREINAFTER REFERRED TO AS THE INTERNATIONAL UNION).

4. THE HEADINGS ON THESE PETITION DOCUMENTS ARE IDENTICAL AND READ AS FOLLOWS:

"WE THE UNDERSIGNED NO LONGER WISH TO BE REPRESENTED BY THE DISTILLERY, RECTIFYING WINE AND ALLIED INTERNATIONAL UNION OF AMERICA AND DO HEREBY WITH THIS PETITION RESPECTFULLY REQUEST THE ONTARIO LABOUR RELATIONS BOARD TO CONDUCT A DECERTIFICATION VOTE".

5. THE EVIDENCE DISCLOSES THAT THESE DOCUMENTS WERE SIGNED BY THE EMPLOYEES OVER A PERIOD OF APPROXIMATELY TWO AND ONE-HALF DAYS AND WITNESSED BY INDIVIDUAL EXECUTIVE BOARD MEMBERS OF THE RESPONDENT LOCAL UNION. THE EVIDENCE OF RONALD DICKSON, EXECUTIVE BOARD MEMBER OF THE RESPONDENT LOCAL UNION, IS TO THE EFFECT THAT HE DREW UP THE WORDING TO THE PETITION DOCUMENTS IN RESPONSE TO THE MAJORITY OF THE EMPLOYEES' WISHES. WHEN ASKED UPON CROSS-EXAMINATION TO EXPLAIN THE HEADING ON THE DOCUMENTS, HE REPLIED THAT "THE PETITION READS THAT WE WANTED THE BOARD TO DECERTIFY US FROM THE INTERNATIONAL UNION". WHEN PRESSED FURTHER IN THIS REGARD, HE STATED THAT "THE PURPOSE OF DECERTIFICATION IS TO GET RID OF THE INTERNATIONAL UNION AND NOT THE LOCAL." THIS TESTIMONY IS CONSISTENT WITH THAT ADDUCED FROM ROBERT LEGAULT, TREASURER AND EXECUTIVE BOARD MEMBER OF THE RESPONDENT LOCAL UNION, WHO UPON CROSS-EXAMINATION CONCEDED THAT THE EMPLOYEES "SIGNED THE PETITION BECAUSE THEY WERE AGAINST THE INTERNATIONAL UNION AND THEIR LOYALTIES WERE WITH LOCAL 61." HOWEVER, UPON RE-EXAMINATION, BOTH OF THE WITNESSES INDICATED THAT THE TERM "LOCAL" TO THEM MEANT THE BODY OF THE HIRAM WALKER EMPLOYEES AT THE WALKERVILLE PLANT.

6. SECTION 49(3), WHICH APPEARS UNDER THE HEADING OF "TERMINATION OF BARGAINING RIGHTS" IN THE SAID ACT, PROVIDES AS FOLLOWS:

"UPON AN APPLICATION UNDER SUBSECTION 1 OR 2, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 92 THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION AND, IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED."

(EMPHASIS ADDED)

7. A PRE-CONDITION TO THE OPERATION OF SECTION 49(3) OF THE SAID ACT IS FOUND IN SECTION 12 OF THE BOARD'S RULES OF PROCEDURE WHICH PROVIDES FOR THE FILING OF THE FORM 13 DOCUMENT ENTITLED "APPLICATION FOR

DECLARATION TERMINATING BARGAINING RIGHTS BEFORE THE ONTARIO LABOUR RELATIONS BOARD". THE APPLICANT HAS FILED SUCH A DOCUMENT IN THESE PROCEEDINGS, PARAGRAPH #6 OF WHICH PROVIDES:

"(WHERE THE APPLICATION IS MADE UNDER SECTION 49 OF THE ACT.) THE APPLICANT SUBMITS WITH THE APPLICATION THE DOCUMENT OR DOCUMENTS BY WHICH EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

(EMPHASIS ADDED)

8. IT BECOMES VERY CLEAR THEREFORE THAT THE REFERENCE TO "THE TRADE UNION" APPEARING IN SECTION 49(3) CAN ONLY RELATE TO "THE RESPONDENT" WHICH IN THESE PROCEEDINGS CAN ONLY REFER TO THE RESPONDENT LOCAL UNION, WHICH ALONE HOLDS THE BARGAINING RIGHTS.

9. HAVING REGARD THEREFORE TO THE RELEVANT LEGISLATION BEFORE US AND TAKING INTO ACCOUNT THE AMBIGUOUS WORDING AS CONTAINED IN THE HEADING OF THESE PETITION DOCUMENTS TOGETHER WITH THE CONTRADICTORY EVIDENCE AS ADDUCED THROUGH THE APPLICANT'S WITNESSES IN THIS REGARD, WE ARE SATISFIED THAT THE SIGNATORIES TO THESE DOCUMENTS MAY VERY WELL HAVE BEEN CONFUSED AS TO THE NATURE OF THE DOCUMENTS THEY WERE SIGNING IN THAT THEY MAY HAVE MISCONSTRUED THE PURPOSE OF THIS APPLICATION AS ONE DESIGNED MERELY TO SEVER THEIR RELATIONSHIP WITH THE INTERNATIONAL UNION, RATHER THAN AS AN APPLICATION TO EFFECTIVELY DISPOSE OF THE BARGAINING RIGHTS OF THE RESPONDENT LOCAL UNION.

10. IN THESE CIRCUMSTANCES, THEREFORE, WE FIND THAT THE APPLICANT HAS FAILED TO SATISFY THE ONUS CAST UPON IT, THAT THE REQUIREMENTS OF SECTION 49(3) OF THE LABOUR RELATIONS ACT HAVE BEEN MET AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J. D. BELL: NOVEMBER 29, 1973.

A REVIEW OF THE EVIDENCE SATISFIES ME THAT THE SIGNATORIES TO THE DOCUMENT WISHED TO DECERTIFY THE INCUMBENT UNION. I WOULD DIRECT A REPRESENTATION VOTE BE HELD WITH THE CORRECT NAME OF THE RESPONDENT SPELLED OUT. I WOULD NOT DENY SUCH VOTE ON A TECHNICALITY WHICH COULD BE EASILY CORRECTED.

4250-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) v. DRAGOON INVESTMENTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: PAUL CAVALLUZZO FOR THE APPLICANT; JOHN P. SANDERSON AND S. SPEARS FOR THE RESPONDENT.

DECISION OF THE BOARD:

NOVEMBER 30, 1973.

. . .

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED OCTOBER 26, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE RESPONDENT OPERATES FROM TWO LOCATIONS IN SCARBOROUGH WHICH ARE SITUATE ABOUT TWO BLOCKS APART, ONE AT 426 ELLESMERE ROAD AND THE OTHER AT 1399 KENNEDY ROAD. IT IS CLEAR FROM THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT THE RESPONDENT OPERATES AN INTEGRATED OPERATION AT ITS KENNEDY ROAD AND ELLESMERE ROAD PLANTS. THE LACK OF LAND SPACE AT THE ELLESMERE ROAD LOCATION IS THE ONLY REASON FOR THE PHYSICAL SEPARATION OF THE TWO PLANTS.

3. WHEN ALL THE FACTORS ENUMERATED IN THE USARCO LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, P. 526, ARE APPLIED AND WEIGHED IN LIGHT OF THE EVIDENCE IN THIS CASE, WE FIND THAT THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE CONTENTION THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS MATTER INCLUDES THE EMPLOYEES OF THE RESPONDENT AT BOTH LOCATIONS. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

5. THE APPLICATION IS THEREFORE DISMISSED.

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REFERENCE TO BOARD PURSUANT TO SECTION 96

3611-73-M: THE ONTARIO ERECTORS ASSOCIATION (EMPLOYER) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 786 SUDBURY (TRADE UNION) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (INTERVENER). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

3479-72-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. CANADA GLAZED PAPERS LTD. (RESPONDENT). (REQUEST DENIED).

[1973] 2 OLRB M.R. - PAGE 544.

4399-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. TRILLIUM RECREATIONAL VEHICLES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

[1973] 2 OLRB M.R. - PAGE 552.

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

3543-73-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ILSCO OF CANADA LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SUCCESSOR STATUS

4053-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WENTWORTH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE WENTWORTH COUNTY BOARD OF EDUCATION, CARETAKING AND MAINTENANCE ASSOCIATION (PREDECESSOR TRADE UNION). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

3055-72-R: ELECTRICAL DIVISION OF THE CONSTRUCTION ASSOCIATION OF THUNDER BAY (APPLICANT) V. LOCAL UNION NO. 339, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT) V. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYERS OF ELECTRICIANS AND ELECTRICIANS' APPRENTICES ON WHOSE BEHALF THE RESPONDENT IS ENTITLED TO BARGAIN IN THE DISTRICT OF KENORA INCLUDING THE PATRICIA PORTION, THE DISTRICT OF RAINY RIVER AND THE DISTRICT OF THUNDER BAY, AND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

4017-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. HEMBRUFF AND DAMBROWITZ (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF FAUQUIER, MACHIN, ALEXANDRA, NANSEN, SHACKLETON, HAGGART, MACVICAR, CARMICHAEL AND SYDERE IN THE DISTRICT OF COCHRANE (EXCEPT THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF CARMICHAEL, SYDERE AND HAGGART WHICH ARE INCLUDED IN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (NO EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 601.

4024-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. DAAL SPECIALTIES (CANADA) LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE GENERAL MANAGER, EMPLOYEES EMPLOYED IN THE EMPLOYEE-RELATIONS DEPARTMENT, TECHNICAL PERSONNEL AND INDUSTRIAL ENGINEERS." (22 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 592.

4198-73-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (RESPONDENT) V. NURSES' ASSOCIATION HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HUNTSVILLE, SAVE AND EXCEPT SECRETARY TO THE ADMINISTRATOR, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE APPLICANT AND THE RESPONDENT AND BETWEEN THE INTERVENER AND THE RESPONDENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (...THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL INCLUDES X-RAY TECHNICIANS, LABORATORY TECHNICIANS AND PHYSIOTHERAPISTS.).

4216-73-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. HAND NURSING HOMES LIMITED CARRYING ON BUSINESS AS WESTLAKE NURSING AND CONVALESCENT HOME (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT PICTON, SAVE AND EXCEPT PROFESSIONAL STAFF, MEDICAL STAFF, GRADUATE NURSING STAFF, GRADUATE PHARMACISTS, GRADUATE DIETICIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

4262-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. S. B. SUTTON WHOLESALE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THEIR SUBMISSIONS.).

4316-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE CORPORATION OF THE TOWN OF ARNPRIOR (RESPONDENT).

UNIT: "ALL OUTSIDE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CARETAKERS, PLANT OPERATORS, OFFICE AND CLERICAL EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4356-73-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. INTERNATIONAL HARDWARE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARIES TO THE PRESIDENT AND THE VICE-PRESIDENT, SENIOR BOOKKEEPER, PRODUCTION ENGINEER, DRAFTING AND TECHNICAL ENGINEER, TIME STUDY ENGINEER, PURCHASING AGENTS, COST ANALYSTS, REGISTERED NURSE, SALESMEN, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (31 EMPLOYEES IN THE UNIT).

4380-73-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. ALDON INSPECTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 569.

4387-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE COUNTY OF BRUCE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE HIGHWAY DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, CHIEF SURVEYORS, PERSONS ABOVE THE RANKS OF FOREMAN AND CHIEF SURVEYOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4397-73-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NEW YORK WINDOW CLEANING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT YORK CONDOMINIUM No. 42 AT 330-340 DIXON ROAD IN THE BOROUGH OF ETOBICOKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

4485-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. AUTOMOTIVE WAREHOUSING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4523-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT THE ASSISTANT MERCHANDISE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MERCHANDISE MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4524-73-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT).

UNIT: "ALL X-RAY TECHNOLOGISTS EMPLOYED IN THE X-RAY DEPARTMENT BY ST. JOSEPH'S HOSPITAL AT HAMILTON, SAVE AND EXCEPT CHARGE TECHNOLOGISTS, PERSONS ABOVE THE RANK OF CHARGE TECHNOLOGISTS, STUDENTS, OFFICE AND CLERICAL STAFF, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING SUMMER VACATION PERIOD AND THOSE COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4551-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF CLARKE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE ROAD SUPER-INTENDANT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDANT AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

4556-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WETMORE WELDING SUPPLIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN AND DISPATCHERS, THOSE ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE, SALES AND SERVICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4566-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TIMMINS BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN ITS MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

4571-73-R: COMMUNICATIONS WORKERS OF CANADA (APPLICANT) V. TR SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4582-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. CANADA PAPER 'WHOLESALE' LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

4592-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MASSEY-FERGUSON INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PARTS AND WAREHOUSE DIVISION IN THE BOROUGH OF ETOBICOKE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4594-73-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION No. 7 (APPLICANT) V. E. TARNASKE MASONRY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4595-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. E.S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

4599-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORNWALL GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, DIRECTOR OF PERSONNEL, PAYROLL AND BUDGET OFFICER, SECRETARY TO THE ADMINISTRATOR, SECRETARY TO THE ASSISTANT ADMINISTRATOR IN CHARGE OF FINANCE, SECRETARY TO THE ASSISTANT ADMINISTRATOR IN CHARGE OF NURSING, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT THE DIRECTOR OF PERSONNEL AND THE PAYROLL AND BUDGET OFFICER ARE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.).

4604-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HARLEY'S SUPERMARKET 1962 LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN DRYDEN, SAVE AND EXCEPT THE ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, THE MEAT DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY

EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

4610-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE VILLAGE OF BEAVERTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROADS SUPERINTENDENT, THE CLERK, OFFICE AND TECHNICAL EMPLOYEES." (3 EMPLOYEES IN THE UNIT).

4611-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF BROCK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROADS SUPERINTENDENT, THE CLERK AND OFFICE EMPLOYEES." (8 EMPLOYEES IN THE UNIT).

4612-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF THORAH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROADS SUPERINTENDENT, THE CLERK, OFFICE, CLERICAL AND TECHNICAL STAFF." (3 EMPLOYEES IN THE UNIT).

4616-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 894 AFL-CIO-CLC (APPLICANT) V. MAYNARD ELECTRIC (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVINCIAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4625-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CROSS RIVER PRODUCTS CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SHIPPER, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4633-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HIWAY MARKET LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, WHOLESALE SALESMEN AND CLERICAL EMPLOYEES OF THE RESPONDENT AT KITCHENER AND WATERLOO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE HEAD CASHIER, THE PAYMASTER

AND PERSONNEL ASSISTANT, THE SECRETARY TO THE GENERAL MANAGER, AND THE OFFICE MANAGER IN TRAINING WERE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY EXERCISE MANAGERIAL AND/OR CONFIDENTIAL DUTIES WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT.).

4635-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CONNECTOR CRAFT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

4640-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. THE FRED W. HALLS PAPER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

4645-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. SHADY LANE NURSING HOME LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATHROY, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, REGISTERED NURSES, GRADUATE NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

4646-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. SHADY LANE NURSING HOME LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATHROY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, REGISTERED AND GRADUATE NURSES, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

4647-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. WEST-END MECHANICAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4650-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

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4656-73-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. METROPOLITAN TORONTO ASSOCIATION FOR THE MENTALLY RETARDED (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT THE HAROLD LAWSON RESIDENCE IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, HOUSEKEEPING STAFF, CLERICAL STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4657-73-R: LOCAL UNION 911, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. WALLACEBURG HYDRO ELECTRIC SYSTEM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4659-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HADOVIC CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

4661-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. TUGHAN EXPRESS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY AT AND OUT OF KITCHENER, ONTARIO AND MISSISSAUGA, ONTARIO, SAVE AND EXCEPT DISPATCHERS AND FOREMEN, PERSONS ABOVE THE RANK OF DISPATCHER AND FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4662-73-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION No. 7 (APPLICANT) V. BRUNO CATTAI (RESPONDENT) V. EMPLOYEES (OBJECTION).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4663-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. FIBREZ OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT THE SAUNDERS DRIVE PLANT IN CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4665-73-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. CONRAD FORAND & FILS (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4668-73-R: SERVICE EMPLOYEES UNION LOCAL 268, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC (APPLICANT) V. NIPIGON-RED ROCK BOARD OF EDUCATION.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4669-73-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. DEER MINE SERVICES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4672-73-R: CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. COLLINGWOOD GENERAL AND MARINE HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND NON-REGISTERED LABORATORY TECHNOLOGISTS, AND ALL REGISTERED AND NON-REGISTERED RADIOLOGY TECHNOLOGISTS, EMPLOYED BY

THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT CHIEF LABORATORY TECHNOLOGIST, CHIEF RADIOLOGY TECHNOLOGIST, PERSONS ABOVE THE RANK OF SUCH TECHNOLOGISTS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, OFFICE AND CLERICAL STAFF, PRACTISING MEMBERS OF THE MEDICAL AND NURSING PROFESSIONS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4682-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. WINDSOR CARBURETOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4686-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ANTICI CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4701-73-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124, OTTAWA-HULL (APPLICANT) V. GALANG LATHING CO. LTD. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRY-WALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

4702-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4704-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. PINECREST FOODS (CHATHAM) - A DIVISION OF MAPLE LEAF MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (85 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4708-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) v. SOUTH HURON HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN EXETER, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (4 EMPLOYEES IN THE UNIT).

4713-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. HOULE RED & WHITE FOODMASTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MASSEY, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

4722-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. VASTO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (8 EMPLOYEES IN THE UNIT).

4723-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) v. ACME BUILDING AND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

4744-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. LINDSTROM CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4758-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. POIRIER ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4761-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4775-73-R: OPERATIVE PLASTERERS' & CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 OTTAWA, ONTARIO (APPLICANT) V. BMH CONTRACTING (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3972-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PERTH CONCRETE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN STRATFORD AND ST. MARY'S, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

4311-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. JACKSON BUILDERS SUPPLIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT IROQUOIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	28
NUMBER OF PERSONS WHO CAST BALLOTS	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

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4334-73-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MALETTE LUMBER (1969) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL, YARD AND GARAGE AT TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (168 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	141
NUMBER OF PERSONS WHO CAST BALLOTS	105
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	75
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	29

4465-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) V. MASON WINDOWS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF PICKERING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	88
NUMBER OF PERSONS WHO CAST BALLOTS	75
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	43
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	31

4522-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. INTERNATIONAL COOPERAGE COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

3451-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. E & E SEEGRILLER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (105 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	63
NUMBER OF PERSONS WHO CAST BALLOTS	62
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	32
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30

4216-73-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. HAND NURSING HOMES LIMITED (RESPONDENT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT PICTON REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL STAFF, MEDICAL STAFF, GRADUATE NURSING STAFF, GRADUATE PHARMACISTS, GRADUATE DIETICIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND CLERICAL STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4378-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ESSEX FARMERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TRUCK AND AUTOMOBILE SERVICE GARAGE AT ESSEX, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, SALESMEN, SERVICE WRITER AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

4392-73-R: NURSES' ASSOCIATION ALTAMONT NURSING HOME (APPLICANT) V. ALTAMONT NURSING HOME LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL REGISTERED AND CHARGE NURSES EMPLOYED BY THE RESPONDENT AT ITS NURSING HOME AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT DIRECTOR OF NURSING AND PERSONS ABOVE THE RANK OF ASSISTANT DIRECTOR OF NURSING." (16 EMPLOYEES IN THE UNIT). (THE BOARD DIRECTED THAT PERSONS CLASSIFIED AS GRADUATE NURSES OR MEDICAL CO-ORDINATORS BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.). (THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND THAT THE BALLOTS NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

4425-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PORT HOPE AND DISTRICT HOSPITAL (THE PORT HOPE HOSPITAL TRUST) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, PERSONS EMPLOYED BY VERSAFOODS

LIMITED IN THE HOSPITAL, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (46 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	40
NUMBER OF PERSONS WHO CAST BALLOTS	37
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

4460-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STERLING FUELS (A DIVISION OF THE CANADIAN FUEL MARKETERS GROUP LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

4462-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STERLING FUELS (A DIVISION OF THE CANADIAN FUEL MARKETERS GROUP LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

4463-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STERLING FUELS (A DIVISION OF THE CANADIAN FUEL MARKETERS GROUP LTD.) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF PORT STANLEY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	17	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

4490-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH AND CARRY OPERATIONS IN LINDSAY AND PETERBOROUGH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

3274-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 633, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

3280-72-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175 CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. DARRIGO'S FOOD MARKETS ONT. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (42 EMPLOYEES).

3912-73-R: L.I.U.N.A., LABOURERS LOCAL 1059 (APPLICANT) V. AMBASSADOR BUILDING MAINTENANCE LIMITED (RESPONDENT) V. BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, WINDSOR, LOCAL #1494 (INTERVENER). (24 EMPLOYEES).

4076-73-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. UPLANDS NURSING HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (14 EMPLOYEES).

4164-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ATLAS ALLOYS, A DIVISION OF RIO ALGOM MINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (76 EMPLOYEES).

4212-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION ~~446~~ (APPLICANT) V. STAR CONSTRUCTION AND LUMBER SUPPLY (RESPONDENT). (2 EMPLOYEES).

4250-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) V. DRAGOON INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (368 EMPLOYEES IN THE UNIT).

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4377-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) V. CORONET FURNITURE COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (37 EMPLOYEES).

4597-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. G. M. GEST LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER #1) V. THE ONTARIO PROVINCIAL DISTRICT COUNCIL OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATED LOCAL UNIONS, 183, 247, 493, 527, 597, 607, 625, 749, 837, 1036, 1059, 1081 AND 1089 (INTERVENER #2). (3 EMPLOYEES).

4620-73-R: WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 562, (APPLICANT) V. J. A. MACDONALD (LONDON) LTD. (RESPONDENT) V. LOCAL 1946 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (50 EMPLOYEES).

4644-73-R: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS AFL CIO CLC (APPLICANT) V. RCA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR). (14 EMPLOYEES).

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4745-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (APPLICANT) V. ELASTONETAL LTD. (RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1789-71-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER #1) V. THE OIL CHEMICAL & ATOMIC WORKERS' INTERNATIONAL UNION (INTERVENER #2).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS AUXILIARY STEAM PLANT AT DOUGLAS POINT, SAVE AND EXCEPT CHIEF ENGINEER." (105 EMPLOYEES). (THE BOARD FURTHER DIRECTED IN ITS DECISION DATED APRIL 27TH, 1972: "... THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.").

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18

BALLOT BOX SEALED

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4458-73-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. NORTHERN STAG INDUSTRIES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ROCKWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	14

4505-73-R: AMALGAMATED JEWELRY, AND ALLIED TRADES WORKERS UNION, LOCAL 33, TORONTO, AFFILIATED WITH INTERNATIONAL JEWELRY WORKERS UNION C.L.C. A.F.L.-C.I.O. (APPLICANT) V. SIFFARI JEWELLERY COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE PRODUCTION OF ARTICLES OF JEWELRY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND DELIVERY PERSONNEL." (20 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	67
NUMBER OF PERSONS WHO CAST BALLOTS	66
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	49

4549-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. J. D. SMITH & SON LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, DISPATCHER, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (85 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	91
NUMBER OF PERSONS WHO CAST BALLOTS	86
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	66

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

4296-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. BRINK'S CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT CASHIERS, PERSONS ABOVE THE RANK OF CASHIER, OFFICE AND SALES STAFF, MONEY ROOM CHIEF CLERK, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'

LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

4434-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LONDON MOTOR PRODUCTS (1968) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CASHIERS AND SERVICE SALES TRAINEES ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED

VOTERS' LIST	50
NUMBER OF PERSONS WHO CAST BALLOTS	47
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	25

4514-73-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. POLY CONVERTERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED

VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19

4534-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. WYANDOTTE CHEMICALS OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY TECHNICIANS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

4574-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LEAMINGTON TRANSPORT LTD. (RESPONDENT). (6 EMPLOYEES).

4614-73-R: THE WINDSOR RACEWAY SECURITY PERSONNEL ASSOCIATION (APPLICANT) V. WINDSOR RACEWAY HOLDINGS LIMITED (RESPONDENT). (54 EMPLOYEES).

4615-73-R: FAMILY & CHILDREN'S SERVICES ADMINISTRATIVE STAFF ASSOCIATION (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF THE CITY OF LONDON AND THE COUNTY OF MIDDLESEX (KNOWN AS FAMILY AND CHILDREN'S SERVICES OF LONDON AND MIDDLESEX) (RESPONDENT). (30 EMPLOYEES).

4617-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CROSSROADS DEVELOPMENTS LTD. (RESPONDENT). (10 EMPLOYEES).

4638-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CROSSROADS CONDOMINIUMS (RESPONDENT). (10 EMPLOYEES).

4679-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MARTINI READY-MIX (RESPONDENT). (17 EMPLOYEES).

4690-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268 LAKEHEAD LABOUR CENTRE, ROOM 19 STATION "P", THUNDER BAY, ONTARIO (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 865 (INTERVENER #2). (66 EMPLOYEES).

4705-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PREMIER PETRENAS CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 493 (INTERVENER). (4 EMPLOYEES).

4712-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. WINFORD INVESTMENTS CO. (RESPONDENT). (4 EMPLOYEES).

4734-73-R: SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 639 (WINDSOR RACEWAY UNION) (APPLICANT) V. WESTERN FAIR ASSOCIATION, (OPERATING WESTERN FAIR RACEWAY) (RESPONDENT). (200 EMPLOYEES).

4746-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. NICOL R. J. CONSTRUCTION LTD. (RESPONDENT). (2 EMPLOYEES).

4747-73-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DEMIK CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

4750-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SELKIRK METALBESTOS DIVISION WALLACE-MURRAY CANADA LIMITED (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION #540 (INTERVENER). (57 EMPLOYEES).

4755-73-R: CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT). (6 EMPLOYEES).

4781-73-R: LOCAL UNION #636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. EAST YORK HYDRO ELECTRIC COMMISSION (OFFICE) (RESPONDENT). (18 EMPLOYEES).

4808-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SULLIVAN SENECA HILL TOWERS (RESPONDENT). (2 EMPLOYEES).

4822-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. DEEP DIVING SYSTEMS LTD. (RESPONDENT). (8 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING NOVEMBER

3824-73-R: YVON COTÉ ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CHAPLEAU LUMBER CO. LTD. (INTERVENER). (119 EMPLOYEES). (DISMISSED).

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3948-73-R: BRUCE REID (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. NORTH AMERICAN STEEL EQUIPMENT COMPANY LIMITED (INTERVENER). (9 EMPLOYEES). (DISMISSED).

4280-73-R: HARRY VOGT (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF NEW SUDBURY VOLKSWAGON LIMITED FORMERLY PAWSON'S (SUDBURY) LIMITED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	15

4298-73-R: EDMOND MCTAGUE, AARON THOMSON, ROBERT DEVILLERS, PAUL DUMONT, BASIL LAURIN, JOHN LAURIN, DAVE WEATHERELL (APPLICANTS) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, LOCAL 254 (RESPONDENT). (GRANTED).

UNIT: "ALL BARTENDERS, TAPMEN AND WAITERS IN THE EMPLOY OF THE COMMODORE HOTEL AT PENETANGUISHENE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	6

4400-73-R: LEN PHILLIPS (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS - LOCAL 2338 (RESPONDENT) V. CAMPBELL CHEVROLET LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF CAMPBELL CHEVROLET LTD. IN SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MOTOR VEHICLE SALESMEN, OUTSIDE PARTS SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	12
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	23

4430-73-R: GENAM CONSTRUCTION LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (RESPONDENT). (GRANTED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF GENAN CONSTRUCTION LIMITED IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	2

4693-73-R: PATRICK MCKEON AND OTHER EMPLOYEES OF HIRAM WALKER & SONS LIMITED (APPLICANT) V. THE DISTILLERY WORKERS' UNION LOCAL 61, WALKERVILLE, ONTARIO, AFFILIATED WITH THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFFILIATED WITH THE AFL-CIO, CLC-OFL (RESPONDENT). (877 EMPLOYEES). (DISMISSED).

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APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

NOVEMBER

3645-73-R: INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCALS 72, 192 AND 199 (APPLICANT) V. ROBES ROYALE LIMITED (RESPONDENT) V. SHAKER MANUFACTURING COMPANY LIMITED (INTERVENER). (AFFIRMATIVE).

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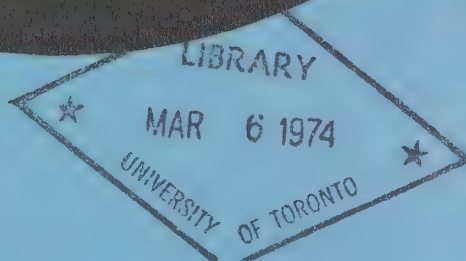
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UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. INGLIS LIMITED.....

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PROCEDURE - S79 - DISCHARGE FOR UNION ACTIVITY - S58(A) - S46 OF THE RULES - EFFECT OF AN ATTEMPT TO UNDERMINE THE DECISION OF AN ARBITRATION BOARD - WHETHER A PRIMA FACIE VIOLATION OF THE ACT - S46(3) OF THE RULES - WHETHER THE BOARD TO RECONSIDER A DECISION TO DISMISS UNDER S46(3) OF THE RULES.

WALTER CLEMENT SARICH V. ALGOMA STEEL CORPORATION LIMITED....

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SALE OF A BUSINESS - CERTIFICATION - EFFECT OF AN AMALGAMATION OF MUNICIPALITIES ON TIMELINESS OF AN APPLICATION FOR CERTIFICATION - WHETHER EMPLOYEES OF THE EMPLOYER AT A DATE RELEVANT TO THE APPLICATION FOR CERTIFICATION - S55 - EFFECT OF S55 UPON THE MERGER OF THE RESPONDENT WITH OTHER MUNICIPALITIES AT A LATER DATE.

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S79 - DISCHARGE FOR UNION ACTIVITY - S58(A) - WHETHER A DISCHARGE OR A VOLUNTARY QUIT - EFFECT OF REASONABLE EXPLANATION BY THE EMPLOYER IN ANY EVENT.

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S79 - DUTY OF FAIR REPRESENTATION - EFFECT OF WITHDRAWAL OF GRIEVANCE ALLEGING THE AGGRIEVED WAS DISCHARGED WITHOUT JUST CAUSE - S60 - WHETHER DONE CONTRARY TO THE TRADE UNIONS DUTY OF FAIR REPRESENTATION - WHETHER BOARD AUTHORIZED TO DIRECT REINSTATEMENT IN ANY EVENT.

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S79 - PROCEDURE - DISCHARGE FOR UNION ACTIVITY - S58(A) - S46 OF THE RULES - EFFECT OF AN ATTEMPT TO UNDERMINE THE DECISION OF AN ARBITRATION BOARD - WHETHER A PRIMA FACIE VIOLATION OF THE ACT - S46(3) OF THE RULES - WHETHER THE BOARD TO RECONSIDER A DECISION TO DISMISS UNDER S46(3) OF THE RULES

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TERMINATION - EMPLOYEES - EVIDENCE - S1(2) - EFFECT OF STRIKING EMPLOYEES ASSUMING PERMANENT EMPLOYMENT - WHETHER THEY CONTINUE TO REMAIN EMPLOYEES FOR PURPOSES OF AN APPLICATION FOR TERMINATION - EFFECT ON ONUS OF PROOF - WHETHER THE EMPLOYEES HAVE DEMONSTRATED A CONTINUING INTEREST WITH RESPECT TO EMPLOYMENT STATUS WITH THE INTERVENER.

LLEWELLYN BECK v. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 v. BROOKER TRADE BINDERY LTD..... 612

TIMELINESS - BARGAINING UNIT - WHETHER DISPATCHERS SHARE A COMMUNITY OF INTERESTS WITH OFFICE AND CLERICAL STAFF - WHETHER DISPATCHES THEREBY COVERED BY A COLLECTIVE AGREEMENT HERETOFORE ENTERED INTO BETWEEN RESPONDENT AND INTERVENER - EFFECT OF FAILURE OF EMPLOYEES WHO EXECUTED MEMBERSHIP CARDS TO ATTEND THE BOARD HEARING - S6(1) - WHETHER THE BOARD TO DRAW ANY INFERENCES WITH RESPECT TO THE WISHES OF EMPLOYEES.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION
1187 - AFL CIO CLC v. THE CORPORATION OF THE CITY OF KITCHENER
v. THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL
UNION #791, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES
AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS.....

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TRADE UNION - BARGAINING UNIT - PRACTICE - CONSTRUCTION INDUSTRY
- WHETHER THE INTERVENER ENTITLED TO INTERVENE IN THE PRO-
CEEDINGS - WHETHER AN INTERESTED PARTY - EFFECT OF APPLICA-
TION TO AMEND THE BARGAINING UNIT IN THE COURSE OF A BOARD
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WHETHER BOARD TO GRANT LEAVE TO AMEND - S94 - EFFECT OF THE
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REPRESENTATIVE OF THE APPLICANT AUTHORIZED TO FILE AN APPLICA-
TION FOR CERTIFICATION ON BEHALF OF THE APPLICANT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v.
HASHMAN CONSTRUCTION - DIVISION OF TRISTAR WESTERN LTD. v.
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607....

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TRADE UNION - CONSTRUCTION INDUSTRY - S1(1)(N) - EFFECT OF APPLI-
CANT NOT PREVIOUSLY BEEN FOUND TO BE A TRADE UNION - S106(F)
- WHETHER AN APPLICATION PURSUANT TO THE CONSTRUCTION INDUSTRY
PROVISIONS OF THE ACT APPROPRIATE - WHETHER AN ESTABLISHED
TRADE UNION PRACTICE PERTAINING TO THE CONSTRUCTION INDUSTRY.

CARLO'S ELECTRIC EMPLOYEES ASSOCIATION v. CARLO'S ELECTRIC
LIMITED.....

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DECLARATION TERMINATING BARGAINING RIGHTS BEFORE THE ONTARIO LABOUR RELATIONS BOARD". THE APPLICANT HAS FILED SUCH A DOCUMENT IN THESE PROCEEDINGS, PARAGRAPH #6 OF WHICH PROVIDES:

"(WHERE THE APPLICATION IS MADE UNDER SECTION 49 OF THE ACT.) THE APPLICANT SUBMITS WITH THE APPLICATION THE DOCUMENT OR DOCUMENTS BY WHICH EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

(EMPHASIS ADDED)

8. IT BECOMES VERY CLEAR THEREFORE THAT THE REFERENCE TO "THE TRADE UNION" APPEARING IN SECTION 49(3) CAN ONLY RELATE TO "THE RESPONDENT" WHICH IN THESE PROCEEDINGS CAN ONLY REFER TO THE RESPONDENT LOCAL UNION, WHICH ALONE HOLDS THE BARGAINING RIGHTS.

9. HAVING REGARD THEREFORE TO THE RELEVANT LEGISLATION BEFORE US AND TAKING INTO ACCOUNT THE AMBIGUOUS WORDING AS CONTAINED IN THE HEADING OF THESE PETITION DOCUMENTS TOGETHER WITH THE CONTRADICTORY EVIDENCE AS ADDUCED THROUGH THE APPLICANT'S WITNESSES IN THIS REGARD, WE ARE SATISFIED THAT THE SIGNATORIES TO THESE DOCUMENTS MAY VERY WELL HAVE BEEN CONFUSED AS TO THE NATURE OF THE DOCUMENTS THEY WERE SIGNING IN THAT THEY MAY HAVE MISCONSTRUED THE PURPOSE OF THIS APPLICATION AS ONE DESIGNED MERELY TO SEVER THEIR RELATIONSHIP WITH THE INTERNATIONAL UNION, RATHER THAN AS AN APPLICATION TO EFFECTIVELY DISPOSE OF THE BARGAINING RIGHTS OF THE RESPONDENT LOCAL UNION.

10. IN THESE CIRCUMSTANCES, THEREFORE, WE FIND THAT THE APPLICANT HAS FAILED TO SATISFY THE ONUS CAST UPON IT, THAT THE REQUIREMENTS OF SECTION 49(3) OF THE LABOUR RELATIONS ACT HAVE BEEN MET AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J. D. BELL: NOVEMBER 29, 1973.

A REVIEW OF THE EVIDENCE SATISFIES ME THAT THE SIGNATORIES TO THE DOCUMENT WISHED TO DECERTIFY THE INCUMBENT UNION. I WOULD DIRECT A REPRESENTATION VOTE BE HELD WITH THE CORRECT NAME OF THE RESPONDENT SPELLED OUT. I WOULD NOT DENY SUCH VOTE ON A TECHNICALITY WHICH COULD BE EASILY CORRECTED.

4250-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (APPLICANT) v. DRAGOON INVESTMENTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: PAUL CAVALLUZZO FOR THE APPLICANT; JOHN P. SANDERSON AND S. SPEARS FOR THE RESPONDENT.

DECISION OF THE BOARD:

NOVEMBER 30, 1973.

. . .

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED OCTOBER 26, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE RESPONDENT OPERATES FROM TWO LOCATIONS IN SCARBOROUGH WHICH ARE SITUATE ABOUT TWO BLOCKS APART, ONE AT 426 ELLESMERE ROAD AND THE OTHER AT 1399 KENNEDY ROAD. IT IS CLEAR FROM THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT THE RESPONDENT OPERATES AN INTEGRATED OPERATION AT ITS KENNEDY ROAD AND ELLESMERE ROAD PLANTS. THE LACK OF LAND SPACE AT THE ELLESMERE ROAD LOCATION IS THE ONLY REASON FOR THE PHYSICAL SEPARATION OF THE TWO PLANTS.

3. WHEN ALL THE FACTORS ENUMERATED IN THE USARCO LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, P. 526, ARE APPLIED AND WEIGHED IN LIGHT OF THE EVIDENCE IN THIS CASE, WE FIND THAT THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE CONTENTION THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING IN THIS MATTER INCLUDES THE EMPLOYEES OF THE RESPONDENT AT BOTH LOCATIONS. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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5. THE APPLICATION IS THEREFORE DISMISSED.

4733-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF SCOTT (RESPONDENT).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. A. ACTON AND G. MCPHEE FOR THE APPLICANT; E. J. ISAAC, Q.C. FOR THE RESPONDENT.

DECISION OF THE BOARD:

DECEMBER 5, 1973.

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3. THE RESPONDENT SUBMITS THAT BY VIRTUE OF A PURPORTED AMALGAMATION OF VARIOUS "AREA MUNICIPALITIES" UNDER THE REGIONAL MUNICIPALITY OF DURHAM ACT, 1973, THE RESPONDENT, THE CORPORATION OF THE TOWN OF UXBRIDGE, AND THE CORPORATION OF THE TOWNSHIP OF UXBRIDGE ARE TO BE AMALGAMATED AS "A TOWNSHIP MUNICIPALITY BEARING THE NAME OF THE CORPORATION OF THE TOWN-

SHIP OF UXBRIDGE" (SEE BILL 162). AS A RESULT OF THIS STATUTORY AMALGAMATION OF MUNICIPALITIES THE RESPONDENT ARGUES THAT IN ACCORDANCE WITH THE ACT OF THE LEGISLATURE THE RESPONDENT NAMED IN THE INSTANT APPLICATION WILL CEASE TO EXIST ON DECEMBER 31, 1973. IT THEREFORE FOLLOWED THAT BECAUSE THERE WILL BE NO EMPLOYER FOR WHOM THE APPLICANT MAY BARGAIN ON BEHALF OF THE EMPLOYEES AFFECTED BY THE APPLICATION IT WOULD SERVE NO USEFUL PURPOSE TO PROCEED WITH THE APPLICATION. IN ADDITION, SINCE ONE OF THE PARTIES TO THE AMALGAMATION IS NOT A PARTY TO AN APPLICATION FOR CERTIFICATION, IT WOULD BE PATENTLY UNFAIR TO PROCEED WITH THE INSTANT APPLICATION. THE RESPONDENT THEREFORE URGES THE BOARD TO RULE THE APPLICATION UNTIMELY.

4. THE BOARD REPEATS ITS DECISION GIVEN ORALLY AT THE HEARING IN THE MATTER. THE RELEVANT DATE FOR DETERMINING ALL MATTERS INCIDENTAL AND PERIPHERAL TO AN APPLICATION FOR CERTIFICATION IS THE DATE THE APPLICATION IS MADE. AT ALL RELEVANT TIMES THE RESPONDENT WAS IN EXISTENCE AND THE EMPLOYER OF THE EMPLOYEES FORMING THE SUBJECT MATTER OF THIS APPLICATION FOR CERTIFICATION. THE INSTANT APPLICATION IS THEREFORE TIMELY.

5. FURTHERMORE, THE BOARD REPEATS THAT SECTION 55 OF THE LABOUR RELATIONS ACT CONTEMPLATES THAT A TRANSACTION OF THE NATURE CITED ABOVE MAY VERY WELL OCCUR DURING AN APPLICATION FOR CERTIFICATION OR AFTER A CERTIFICATE ISSUES AND THE PARTIES ARE ENTITLED TO GIVE NOTICE UNDER S13 OF THE ACT OR AFTER A COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO. [SEE S55(2)(3)] IN SUCH INSTANCES AND UNDER SUCH CIRCUMSTANCES ANY INTERESTED PARTY MAY RESOLVE ANY MATTER THAT ARISES IN CONSEQUENCE OF THE ABOVE TRANSACTION BY HAVING RECOURSE TO THE PROVISIONS COVERED UNDER SECTION 55.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SCOTT SAVE AND EXCEPT ROADS SUPERINTENDENT THOSE ABOVE THE RANK OF ROADS SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4421-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) v. SIMON-WOOD LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: A. M. MINSKY AND L. SCHERTZBERG FOR THE APPLICANT; W. D. JENKINS FOR THE RESPONDENT; BOB SCHWARTZ FOR THE OBJECTORS.

DECISION OF THE BOARD:

DECEMBER 6, 1973.

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4. THE BOARD INQUIRED INTO THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION. THE EVIDENCE REVEALED THAT JOHN WEBER, THE SUPERINTENDENT OF THE RESPONDENT, WHO EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, ASSISTED ROBERT SCHWARTZ IN THE PREPARATION OF THE STATEMENT OF DESIRE. IN ADDITION, JOHN WEBER STOOD "SHOULDER TO SHOULDER" WITH THE EMPLOYEES WHILE THEY SIGNED THE STATEMENT OF DESIRE. MR. SCHWARTZ INFORMED THE BOARD THAT HE HAD ADDED THE PARAGRAPH WHICH EXPLAINED THE PURPOSE OF THE STATEMENT OF DESIRE AFTER THE EMPLOYEES HAD SIGNED IT AND THAT THE OTHER EMPLOYEES WHO SIGNED THE STATEMENT OF DESIRE DID NOT HAVE AN OPPORTUNITY TO SEE IT AFTER THEY HAD SIGNED. IT IS ALSO CLEAR THAT THE EMPLOYEES WHO SIGNED THE STATEMENT OF DESIRE DID SO AFTER PERSUASION TO SIGN IT HAD BEEN EXERTED ON THEM BY JOHN WEBER.

5. THE HAND OF MANAGEMENT IS APPARENT IN THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE. ON THESE GROUNDS ALONE, THE BOARD IS COMPELLED TO FIND THAT THE STATEMENT OF DESIRE DOES NOT REPRESENT THE VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED. IN ADDITION, HOWEVER, WHERE THE PORTION OF THE STATEMENT OF DESIRE WHICH EXPLAINS ITS PURPOSE IS INSERTED AFTER THE EMPLOYEES HAVE SIGNED IT, THE BOARD HAS NOT RELIED ON SUCH A STATEMENT OF DESIRE AS WEAKENING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO LEAD THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. SEE THE BOYLE-MIDWAY CANADA LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1966, P. 697.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4670-73-M: STEMLER CONSTRUCTION (EMPLOYER) V. LOCAL #9 OF THE BRICKLAYERS, MASONS AND PLASTERERS, INTERNATIONAL UNION OF AMERICA (TRADE UNION).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: K. P. LEFEBVRE FOR THE EMPLOYER; A. M. MINSKY, S. B. COOPER AND T. OLDHAM FOR THE TRADE UNION.

DECISION OF THE BOARD:

DECEMBER 6, 1973.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE.

. . .

3. THE EVIDENCE DISCLOSES THAT THE TRADE UNION INITIALLY ENTERED INTO A MASTER COLLECTIVE AGREEMENT WITH THE GENERAL & MASONRY CONTRACTORS DATED SEPTEMBER 25, 1967 (EXHIBIT #15), WHEREIN THE NAME "STEMMLER CONSTRUCTION LTD." IS SHOWN AS ONE OF THE CONTRACTORS, AND IT WAS THE NAME ALLEGED BY THE TRADE UNION AS THE EMPLOYER, WHEN IT HAD SUBSEQUENTLY APPLIED FOR CONCILIATION SERVICES ON MARCH 28, 1970 (EXHIBIT #1) PURSUANT TO THE PROVISIONS OF SECTION 40 [NOW SECTION 45] OF THE ACT. HOWEVER, THE RESULTANT NO BOARD REPORT DATED MAY 14, 1970 (EXHIBIT #2) REFERRED TO THE EMPLOYER AS "STEMLER CONSTRUCTION MASONRY." THE TRADE UNION SUBSEQUENTLY ENTERED INTO A HANDWRITTEN "MEMORANDUM OF AGREEMENT" DATED APRIL 19, 1972 (EXHIBIT #3) WHERE CLAYTON STEMMLER WAS OBSERVED TO HAVE WRITTEN THE NAME "STEMMLER CONSTRUCTOR" AS ONE OF THE FOUR EMPLOYER-CONTRACTOR SIGNATORIES TO THIS DOCUMENT.

4. THE EVIDENCE FURTHER DISCLOSES THAT THE WORDING OF EXHIBIT #3 WAS GENERALLY ADOPTED IN A MORE FORMAL TYPED DOCUMENT, COPIES OF WHICH WERE FILED WITH THE BOARD AS EXHIBITS #4 AND #5 RESPECTIVELY. HOWEVER, BOTH PARTIES DID NOT SIGN THE SAME DOCUMENT. EXHIBIT #5 SHOWS ONLY THE SIGNATORY ON BEHALF OF THE TRADE UNION, WHILE EXHIBIT #4 INDICATES THE SIGNATORIES ON BEHALF OF THE CONTRACTORS. IN THIS REGARD, MERELY THE NAME "CLAYTON STEMMLER" APPEARS AS ONE OF THE FOUR CONTRACTOR SIGNATORIES.

5. HAVING CAREFULLY REVIEWED THE EVIDENCE AS ADDUCED AND TAKING INTO ACCOUNT THE PRINCIPLES AS SET OUT IN THE VERSASERVICES LIMITED CASE [1972] OLRB REP. (APRIL) 306, AND THE REPRESENTATIONS OF THE PARTIES THERETO, WE ARE SATISFIED THAT EXHIBITS #3, 4 AND 5, TAKEN TOGETHER, CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE SAID ACT. IN THIS REGARD, WE FURTHER FIND THAT THIS COLLECTIVE AGREEMENT, WHICH BEARS A TERMINATION DATE OF APRIL 30, 1973, SUBJECT TO CERTAIN SPECIFIED ITEMS, INCORPORATED BY REFERENCE THE TERMS OF THE "MASTER" PROVINCIAL AGREEMENT DATED MAY 1, 1972 (EXHIBIT #18).

6. THE EVIDENCE FURTHER DISCLOSES THAT BY LETTER DATED MARCH 12, 1973, (EXHIBIT #6) THE TRADE UNION NOTIFIED "STEMMLER CONSTRUCTION LTD." AT 35 FRANCIS STREET IN BRANTFORD, OF ITS DESIRE TO BARGAIN FOR THE RENEWAL OF THE SAID COLLECTIVE AGREEMENT, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE SAID ACT. THERE WAS ALSO FIND IN THESE PROCEEDINGS, A POST OFFICE REGISTRATION RECEIPT (EXHIBIT #7) EVIDENCING RECEIPT OF THIS LETTER ADDRESSED TO "STEMMLER CONSTRUCTION LTD." HOWEVER, AS NO NEGOTIATIONS SUBSEQUENTLY ENSUED, THE APPLICANT REQUESTED THE APPOINTMENT OF A CONCILIATION OFFICER ON JULY 11, 1973 (EXHIBIT #8), PURSUANT TO THE PROVISIONS OF SECTION 15 OF THE ACT AND NAMED "STEMMLER CONSTRUCTION LTD." AS THE EMPLOYER AT 35 FRANCIS STREET IN BRANTFORD. THIS APPLICATION WAS ACKNOWLEDGED BY MISS LANDRY OF THE DEPUTY-MINISTER'S OFFICE BY LETTER DATED JULY 16, 1973 (EXHIBIT #9) AND ON ITS FACE INDICATES THAT A COPY HAD ALSO BEEN FORWARDED TO "STEMMLER CONSTRUCTION LTD." AT 35 FRANCIS STREET IN BRANTFORD.

7. THE EVIDENCE OF JOHN OLDHAM, THE BUSINESS REPRESENTATIVE OF THE TRADE UNION, IS TO THE EFFECT THAT HE SIGNED EXHIBIT #8 AND WAS SUBSEQUENTLY ADVISED OVER THE TELEPHONE BY MISS LANDRY THAT THE NAME OF THE EMPLOYER WAS NOW BEING CONTESTED, AND THAT HE SHOULD THEREFORE WITHDRAW HIS APPLICATION AND REFILE UNDER THE CORRECT NAME. AS A RESULT OF THIS CONVERSATION, HE STATED THAT HE DISCOVERED THE NAME "STEMMLER CONSTRUCTION MASONRY DIVISION" IN THE BRANTFORD TELEPHONE DIRECTORY WHICH WAS THE SAME NAME THAT HE HAD OBSERVED APPEARING ON STEMMLER'S TRUCK. HE FURTHER STATED THAT HE THEN FILED A SECOND APPLICATION REQUESTING CONCILIATION SERVICES ON AUGUST 27, 1973, (EXHIBIT #10) WHEREIN HE DESCRIBED THE EMPLOYER IN THIS NAME AT 35 FRANCIS STREET IN BRANTFORD. HE FURTHER INDICATED IN THIS DOCUMENT THAT WRITTEN NOTICE OF DESIRE TO BARGAIN WAS GIVEN ON MARCH 12, 1973, THE DATE APPEARING ON EXHIBIT #6 WHICH WAS ADDRESSED TO "STEMMLER CONSTRUCTION LTD." UPON CROSS-EXAMINATION, HE DENIED THAT HE HAD EVER BEEN HERETOFORE ADVISED OF THE PROPER NAME OF THE EMPLOYER ALTHOUGH HE CONCEDED THAT THE NAME "STEMMLER CONSTRUCTION, MASONRY DIVISION" DID APPEAR IN CERTAIN ROUTINE CORRESPONDENCE BEARING HIS SIGNATURE EMANATING FROM HIS OFFICE (SEE EXHIBITS #16 AND #17). THIS CORRESPONDENCE WAS ALSO ADDRESSED TO 35 FRANCIS STREET IN BRANTFORD.

8. BY LETTER DATED SEPTEMBER 7, 1973, (EXHIBIT #11) THE OFFICE OF THE DEPUTY MINISTER ACKNOWLEDGED RECEIPT OF THIS SECOND APPLICATION. HOWEVER, THE EMPLOYER IN THIS CORRESPONDENCE WAS DESCRIBED AS "STEMMLER CONSTRUCTION" AND INDIVIDUAL COPIES WERE SENT TO THIS NAME AT 35 FRANCIS STREET IN BRANTFORD AND TO MR. LEFEBVRE, COUNSEL FOR THE EMPLOYER IN THESE PROCEEDINGS. BY FURTHER LETTER DATED SEPTEMBER 27, 1973, MISS LANDRY ADVISED THE TRADE UNION THAT AN OBJECTION HAD BEEN RAISED TO THIS APPLICATION.

9. ENCLOSED WITH THIS LETTER WAS CORRESPONDENCE FROM MR. LEFEBVRE DATED SEPTEMBER 25, 1973, WHICH IS REPRODUCED AS FOLLOWS:

"ATTENTION: Miss J. P. Landry

DEAR MADAM:

RE: STEMMLER CONSTRUCTION

FURTHER TO OUR SEVERAL TELEPHONE CONVERSATIONS WE HAVE BEEN INSTRUCTED BY CLAYTON STEMMLER TO TAKE ISSUE WITH THE REQUEST FOR APPOINTING A CONCILIATION OFFICER BASED ON THE APPARENT MIS-STATEMENT CONTAINED THEREIN.

THE REQUEST CONTAINS THE INFORMATION ON PAGE 3, PARAGRAPH 4, THAT WRITTEN NOTICE WAS GIVEN ON THE 12TH DAY OF MARCH, 1973, AND WE TAKE THE POSITION THAT NOTICE WAS NOT GIVEN TO STEMMLER CONSTRUCTION.

YOU WILL RECALL THAT THERE HAS BEEN APPARENT CONFUSION BETWEEN STEMMLER CONSTRUCTION AND STEMMLER CONSTRUCTION LIMITED AND WE BELIEVE THAT THE ONUS IS ON THE PARTIES CALLING THE SERVICES OF A CONCILIATION OFFICER TO COMPLY WITH THE ACT AND TO BE CORRECT IN THE INFORMATION GIVEN BY IT TO THE BOARD."

10. BY LETTER DATED OCTOBER 12, 1973, OLDHAM REPLIED AS FOLLOWS:

"DEAR MISS LANDRY,

IN ANSWER TO MR. LEFEBVRE'S LETTER OF SEPT. 25TH 1973. IT WOULD APPEAR THAT MR. STEMMLER AND MR. LEFEBVRE ARE JUST USING DELAYING TACTICS, BECAUSE ALL CORRESPONDENCE THAT HAS BEEN SENT TO MR. STEMMLER FROM LOCAL #9 IN THE PAST, HAS BEEN ADDRESSED TO STEMMLER CONSTRUCTION LTD., IN FACT IN 1967 LOCAL #9 APPLIED FOR A CONCILIATION OFFICER AGAINST MR. STEMMLER AND IT WAS FILED UNDER STEMMLER CONSTRUCTION LTD., ALSO IN OUR 1967 COLLECTIVE AGREEMENT WHICH I AM ENCLOSING WE HAVE THE SAME.

SINCE WE HAVE NEVER BEEN ADVISED OF ANY CHANGE IN THE NAME, WE HAVE NATURALLY USED THE NAME AS KNOWN TO US.

YOURS TRULY

T. OLDHAM

BUSINESS AGENT LOCAL #9

BRANTFORD."

11. THE QUESTION THEREFORE NOW TO BE RESOLVED BY THIS BOARD IS TO DETERMINE WHETHER EXHIBIT #6 DATED MARCH 12, 1973, ADDRESSED TO "STEMMLER CONSTRUCTION LTD." AT 35 FRANCIS STREET IN BRANTFORD, CONSTITUTES TIMELY NOTICE IN WRITING TO "STEMMLER CONSTRUCTION" AT 35 FRANCIS STREET IN BRANTFORD, FOR THE RENEWAL OF THE SAID COLLECTIVE AGREEMENT, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE ACT.

12. HAVING CAREFULLY REVIEWED THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT DURING THE COURSE OF ITS BARGAINING HISTORY AS SET OUT ABOVE, THE EMPLOYER HAS BEEN DESCRIBED IN AT LEAST FIVE DIFFERENT NAMES. HOWEVER, (AT LEAST SINCE MARCH OF 1970) THE EMPLOYER HAS CONDUCTED HIS BUSINESS OUT OF THE SAME LOCATION MUNICIPALLY SITUATE AT 35 FRANCIS STREET IN BRANTFORD, WHICH IS THE ADDRESS UTILIZED BY THE TRADE UNION IN ITS CORRESPONDENCE AT ALL RELEVANT TIMES. THE FACT THAT

THE NOTICE REQUESTING RENEWAL OF A COLLECTIVE AGREEMENT WAS CORRECTLY ADDRESSED TO THE PREMISES OF THE EMPLOYER IS SIGNIFICANT AND TOGETHER WITH THE FILING OF A REGISTRATION POST OFFICE RECEIPT FOR SUCH NOTICE, HAS BEEN HELD TO CONSTITUTE PROPER NOTICE HAVING REGARD TO THE PROVISIONS OF SECTION 102 OF THE SAID ACT, EVEN IN THE FACE OF A SPECIFIC DENIAL BY THE EMPLOYER THAT HE HAD IN FACT RECEIVED SUCH NOTICE. (IN THIS REGARD, SEE THE G.M. NELSON WELDING CASE [1972] OLRB REP. 481). FURTHER, WE ARE SATISFIED THAT IN THESE CIRCUMSTANCES, THE CONFUSION IN THE NAMES AS SET OUT ABOVE IS ATTRIBUTABLE, AT LEAST IN PART, TO THE ACTIONS OF THE EMPLOYER.

13. IN THE ABSENCE THEREFORE OF DIRECT EVIDENCE THAT THE TRADE UNION WAS SPECIFICALLY ADVISED OF THE PROPER NAME OF THE EMPLOYER AT THE RELEVANT TIME, WE ARE SATISFIED THAT THE OBJECTIONS AS RAISED BY THE EMPLOYER IN THESE SPECIAL CIRCUMSTANCES ARE ESSENTIALLY OF A TECHNICAL NATURE. HAD SUCH A MATTER, FOR EXAMPLE, BEEN RAISED BEFORE US DURING THE COURSE OF PROCEEDINGS INVOLVING A CERTIFICATION APPLICATION, WE WOULD HAVE UNDOUBTEDLY BEEN INCLINED TO TREAT THE ERROR IN THE NAME AS A BONA FIDE MISTAKE. IN THESE CIRCUMSTANCES, WE WOULD HAVE ACCORDINGLY PERMITTED AN AMENDMENT TO THE STYLE OF CAUSE TO SHOW THE CORRECT NAME OF THE EMPLOYER BY DELETING THE REFERENCE TO "LTD.", PURSUANT TO THE PROVISIONS OF SECTION 93 OF THE SAID ACT. IN THIS REGARD, REFERENCE SHOULD ALSO BE HAD TO SECTION 59 OF THE BOARD'S RULES OF PROCEDURE.

14. IN THE RESULT THEREFORE, WE ARE SATISFIED THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, NOTICE HAS BEEN PROPERLY GIVEN BY THE TRADE UNION TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE ACT.

15. ACCORDINGLY, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD IS THAT THE MINISTER HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

2879-72-R: LLEWELLYN BECK (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (RESPONDENT) v. BROOKER TRADE BINDERY LTD. (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: WILLIAM GREENE FOR THE APPLICANT; A. M. MINSKY AND C. BUNLER FOR THE RESPONDENT; G. W. HATELY, Q.C., AND CRAIG PERKINS FOR THE INTERVENER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER J.D. BELL: DECEMBER 6, 1973.

1. THIS IS AN APPLICATION UNDER SECTION 49(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT IS DESCRIBED IN ARTICLE 1 - RECOGNITION, OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH EXPIRED ON JULY 31, 1971. SECTION 1.01 OF THE COLLECTIVE AGREEMENT STATES:

"THE EMPLOYER RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR JOURNEYMEN AND JOURNEYWOMEN BOOKBINDERS AND APPRENTICES EMPLOYED UNDER THIS AGREEMENT."

NEGOTIATIONS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT WERE UNSUCCESSFUL AND RESULTED IN A STRIKE WHICH COMMENCED ON DECEMBER 20, 1971.

3. AT THE HEARING, A QUESTION AROSE AS TO WHAT PERSONS COMPRISE THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT ON THE DATE OF THE MAKING OF THE APPLICATION HEREIN, NAMELY, NOVEMBER 20, 1972. THE QUESTION INVOLVES PERSONS WHO WERE WORKING FOR THE INTERVENER ON THE DATE OF THIS APPLICATION AND ALSO PERSONS WHO HAD GONE ON STRIKE AGAINST THE INTERVENER. IT IS, OF COURSE, BEYOND DISPUTE THAT, BY VIRTUE OF SECTION 1(2) OF THE ACT, THE PERSONS WHO WENT ON STRIKE ARE NOT TO BE DEEMED TO HAVE CEASED TO HAVE BEEN EMPLOYEES BY REASON ONLY OF THEIR CEASING TO WORK FOR THE INTERVENER AS THE RESULT OF THE STRIKE. ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND THE LISTS FILED BY THE INTERVENER.

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11. WE COME NOW TO DEAL WITH GROUP NO. 5, THE MEMBERS OF WHICH GROUP WENT ON STRIKE AGAINST THE INTERVENER. THE ISSUE TO BE DETERMINED WITH RESPECT TO THESE PERSONS IS WHETHER THEY WERE EMPLOYEES OF THE INTERVENER AT THE DATE OF THE MAKING OF THIS APPLICATION. TOM PERRY, WHOSE EVIDENCE, AS ALREADY NOTED, IS TO BE APPLIED TO ALL MEMBERS OF GROUP NO. 5, WAS HIRED BY THE INTERVENER ON AUGUST 1, 1971. HE WORKED FOR THE INTERVENER UNTIL DECEMBER 17, 1971, WHICH WAS THE FRIDAY PRECEDING THE STRIKE. THE STRIKES COMMENCED ON MONDAY, DECEMBER 20, 1971. ON THAT DATE, THE WITNESS TOOK PART IN THE PICKETING AND CONTINUED TO DO SO UNTIL ABOUT THE MIDDLE OF MAY 1972, AT WHICH TIME HE TOOK A JOB WITH BRYANT PRESS. HE WORKED FOR THAT COMPANY UNTIL THE END OF AUGUST 1972, WHEN HE WAS LAID OFF. HE RETURNED TO WORK AT BRYANT PRESS DURING OCTOBER OR NOVEMBER 1972. THE WITNESS STATED THAT HE WAS NEVER FIRED BY THE INTERVENER NOR DID HE, AT ANY TIME, STATE THAT HE WAS QUITTING ITS EMPLOYMENT. HE RECEIVED NO VACATION PAY FROM THE INTERVENER FOR THE PERIOD AUGUST 1, 1971 TO DECEMBER 17, 1971. THE WITNESS SAID THAT HE INTENDED TO RETURN TO THE INTERVENER IF RECALLED AND IF THE STRIKE WAS SETTLED.

12. THE WITNESS STATED THAT HE DID NOT TAKE ANOTHER JOB DURING THE PERIOD OF LAY OFF FROM BRYANT PRESS IN SEPTEMBER AND OCTOBER OF 1972. HE SAID THAT HE WAS WAITING AND EXPECTING A RECALL FROM BRYANT PRESS. IN ADDITION TO THE LAY OFF REFERRED TO ABOVE, THE WITNESS HAD HOLIDAYS

OF ONE WEEK FROM BRYANT PRESS. HE STATED THAT HE CONSIDERED HIMSELF A PERMANENT EMPLOYEE OF THAT COMPANY. HE STATED THAT HE HAD TAKEN THE POSITION OF BRYANT PRESS BECAUSE HE NEEDED THE MONEY TO SUPPORT HIS FAMILY. WHEN ASKED IF THE JOB WAS PERMANENT OR TEMPORARY, HE SAID IT WAS TO MAKE MONEY AND THAT WAS THE ONLY THING HE HAD IN MIND.

13. IN THE DETERMINATION OF THE STATUS OF TOM PERRY AND THE GROUP OF PERSONS HE REPRESENTS, THE FACT THAT HE TOOK ANOTHER JOB WHILE NOT, IN ITSELF, DECISIVE, IS AN ELEMENT FOR CONSIDERATION. THE WHOLE COURSE OF CONDUCT HAS TO BE REVIEWED ON AN OBJECTIVE BASIS HAVING REGARD TO ALL OF THE CIRCUMSTANCES (SEE J. McLEOD AND SONS LIMITED CASE, DECEMBER 1969 O.L.R.B. M.R. P. 1100).

14. IN THE RE ALLANSON 1971 O.R. 209, THE ONTARIO COURT OF APPEAL WAS CONCERNED WITH THE ENTITLEMENT OF CERTAIN PERSONS TO PARTICIPATE IN TRUST FUNDS SET UP FOR THE BENEFIT OF PRESENT AND RETIRED EMPLOYEES OF A COMPANY. A QUESTION AROSE AS TO WHETHER EMPLOYEES OF THE COMPANY WHO WENT ON STRIKE AND WHO HAD NOT RETURNED TO WORK, AT THE TIME FOR THE DISTRIBUTION OF THE TRUST, WERE STILL EMPLOYEES. ARNUP J.A., WHO DELIVERED THE JUDGEMENT OF THE COURT, STATED THAT A REFERENCE SHOULD BE DIRECTED TO INVESTIGATE THE STATUS OF THESE PERSONS. HE STATED THAT THE PERSONS IN THE GROUP OUGHT TO HAVE AN OPPORTUNITY OF PROVING AFFIRMATIVELY WHICH, IN HIS VIEW, IS WHAT THEY WERE REQUIRED TO DO, THAT THEY WERE STILL EMPLOYEES OF THE COMPANY AT THE MATERIAL TIME. IN THE McLEOD CASE (SUPRA), THE BOARD STATED THAT, IN GENERAL, A STRIKING UNION IS IN A BETTER POSITION TO ADDUCE EVIDENCE RESPECTING STATUS OF ITS MEMBERS WHO ARE ON STRIKE THAN THE EMPLOYER. THE TWO STATEMENTS REFERRED TO ABOVE INDICATE THAT THE ONUS IS UPON THE UNION TO AFFIRMATIVELY PROVE THAT THE PERSONS CONCERNED ARE STILL EMPLOYEES OF THE COMPANY AT THE MATERIAL TIME. THE MATTER IS NOT A SIMPLE ONE AND, AS ALREADY NOTED, IS NOT TO BE DECIDED UPON A SUBJECTIVE BASIS. THERE SHOULD, THEREFORE, BE EVIDENCE OF SOME OVERT ACTION BY THE PERSON WHO WENT ON STRIKE FROM WHICH IT CAN REASONABLY BE CONCLUDED THAT HE HAD NOT ABANDONED HIS STATUS AS AN EMPLOYEE. ANY DOUBT UPON THAT POINT ARISING IN THE EVIDENCE IS TO BE RESOLVED AGAINST THOSE ASSERTING THE CONTINUATION OF THE EMPLOYEE RELATIONSHIP (McLEOD SUPRA).

15. IN THE PRESENT CASE, THE ONLY EVIDENCE RELATING TO AN INTENT UPON THE PART OF THE WITNESS TO MAINTAIN AN EMPLOYER-EMPLOYEE RELATIONSHIP WITH THE INTERVENER IS THE ENTIRELY SUBJECTIVE STATEMENT MADE DURING THE EXAMINATION TO THE EFFECT THAT THE WITNESS, IF RECALLED AND IF THE STRIKE WERE SETTLED, WOULD RETURN TO WORK WITH THE INTERVENER. ON THE OTHER HAND, WHILE, TO REITERATE, THE SOLE FACT THAT HE TOOK A JOB AT BRYANT PRESS IS NOT IN ITSELF DECISIVE OF THE ISSUE, THE WITNESS DID STATE THAT HE CONSIDERED HIS POSITION THERE TO BE PERMANENT. IN ADDITION, IT IS PLAIN THAT THE WITNESS MADE NO REFERENCE TO ANY ACTIVITIES UPON HIS PART FROM WHICH IT MIGHT BE REASONABLY CONCLUDED THAT HE CONTINUED TO REGARD HIMSELF AS AN EMPLOYEE OF THE INTERVENER AFTER THE DATE OF HIS EMPLOYMENT WITH BRYANT PRESS. IT IS, OF COURSE, NOT NECESSARY FOR THE MAINTENANCE OF HIS EMPLOYEE STATUS THAT HE SHOULD CONTINUE DUTY ON

THE PICKET LINE. THE WITNESS, HOWEVER, GAVE NO EVIDENCE OF ANY DEGREE OF PARTICIPATION OR INTEREST IN WHAT WAS TRANSPIRING AT THE STRUCK PLANT. HE ALSO GAVE NO EVIDENCE OF CONTACT WITH THE UNION, THE STRIKERS OR THE EMPLOYER AFTER HE COMMENCED WORK WITH THE NEW EMPLOYER. ON THE CONTRARY, DURING A LAYOFF FROM BRYANT PRESS THAT RAN THROUGH SEPTEMBER TO OCTOBER, THE WITNESS TESTIFIED THAT HE SIMPLY AWAITED A RECALL TO BRYANT PRESS. SOMETIME IN DECEMBER, HE OBTAINED A ONE WEEK HOLIDAY. THERE IS NO EVIDENCE THAT DURING THIS PERIOD HE MADE CONTACT WITH ANYONE INVOLVED IN THE STRIKE AT THE INTERVENER'S PLANT. TO ALL OUTWARD APPEARANCES, THE WITNESS CONDUCTED HIMSELF SOLELY AS AN EMPLOYEE OF BRYANT PRESS.

16. THE FOREGOING EVIDENCE, AT THE VERY LEAST, RAISES A DOUBT WITH RESPECT TO THE EMPLOYMENT STATUS OF THE WITNESS WITH RESPECT TO INTERVENER. THAT DOUBT HAS TO BE RESOLVED AGAINST THE PARTIES WHO ASSERT THAT THE WITNESS AND THE GROUP HE REPRESENTS ARE STILL EMPLOYEES OF THE INTERVENER.

17. WHEN FULL TIME EMPLOYMENT IS TAKEN, THERE IS AN ONUS ON A PERSON TO DEMONSTRATE HE HAS A CONTINUING INTEREST IN MAINTAINING EMPLOYMENT RELATIONSHIP WITH THE STRUCK EMPLOYER. IN ABSENCE OF ACTIVITIES WHICH TEND TO DEMONSTRATE THIS CONTINUING RELATIONSHIP OR VALID REASON FOR FAILING TO ACTIVELY DEMONSTRATE THIS RELATIONSHIP, THE BOARD MUST FIND THAT EMPLOYMENT RELATIONSHIP WITH STRUCK COMPANY HAS BEEN TERMINATED BY THE PERSON WHOSE STATUS IS IN DISPUTE.

18. THE BOARD ACCORDINGLY FINDS THAT THE PERSONS COMPRISING GROUP NO. 5 WERE NOT EMPLOYEES OF THE INTERVENER ON THE DATE OF THE MAKING OF THE APPLICATION HEREIN AND CONSEQUENTLY ARE NOT ENTITLED TO VOTE IN ANY REPRESENTATION VOTE THAT MAY BE ORDERED.

19. IN THE RESULT, THERE ARE SIXTY-FIVE (65) EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF THIS APPLICATION. THE APPLICANT HAS FILED FORTY-TWO (42) INDIVIDUAL STATEMENTS, EACH SIGNED BY A PERSON WHO PURPORTED TO BE AN EMPLOYEE OF THE RESPONDENT, SIGNIFYING THAT THE SIGNATORY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT. THE NAMES OF THIRTY-SIX (36) OF THESE DOCUMENTS CORRESPOND TO NAMES OF PERSONS IN THE BARGAINING UNIT.

20. THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER CONTINUATION OF HEARING, TO INQUIRE INTO THE ORIGINATION OF THE STATEMENTS FILED BY THE APPLICANT AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED AND ALL OUTSTANDING ISSUES.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: DECEMBER 6, 1973.

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SECTION 1(2) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY

REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER, AS THE RESULT OF A LOCK-OUT OR STRIKE OR BY REASON ONLY OF HIS BEING DISMISSED BY HIS EMPLOYER CONTRARY TO THIS ACT OR TO A COLLECTIVE AGREEMENT."

DESPITE THE FACT THAT JOHN BROOKER, THE VICE-PRESIDENT OF THE COMPANY TOLD TOM PERRY, TWICE, WHILE PERRY WAS ON THE PICKET LINE THAT HE WAS FIRED AND THAT HE, PERRY WAS NOT EVER COMING BACK INTO THE PLANT, IT IS WELL SETTLED IN LAW THAT AN EMPLOYER HAS NO SUCH LEGAL RIGHT TO TERMINATE A STRIKERS EMPLOYMENT IN THAT MANNER, SURELY THAT WAS THE KIND OF MISCHIEF CONTEMPLATED BY THE LEGISLATURE PRIOR TO THE ENACTMENT OF SECTION 1(2). THE MAJORITY ARE NOT GUIDED IN THEIR DECISION BY THE FIRING DECLARATION OF JOHN BROOKER SO IT IS NOT NECESSARY TO DEAL WITH THAT ASPECT OF THE EVIDENCE.

I TAKE SERIOUS ISSUE WITH THE MAJORITY IN THEIR DECISION TO DISENFRANCHISE TOM PERRY AND THE OTHER EIGHT STRIKING EMPLOYEES. THE DECISION OF THE MAJORITY IN EFFECT TERMINATES THE EMPLOYMENT OF THESE NINE STRIKERS, I CANNOT SEE WHERE THIS BOARD IN LIGHT OF THE EVIDENCE IN THIS MATTER HAS THE COMPETENCE TO MAKE THIS KIND OF DECISION. THE EMPLOYER CLEARLY COULD NOT TERMINATE THE EMPLOYMENT OF THESE STRIKERS SIMPLY BECAUSE THEY TOOK JOBS DURING THE PERIOD OF THE STRIKE ELSEWHERE OR COULD HE TERMINATE THEIR EMPLOYMENT WITH HIM BECAUSE THEY DID NOT CONTINUE TO WALK THE PICKET LINE, OR DEMONSTRATE ANY DEGREE OF PARTICIPATION OR INTEREST IN WHAT WAS TRANSPIRING AT THE STRUCK PLANT, ATTEND UNION MEETINGS, OR OTHERWISE OVERTLY DEMONSTRATE THEIR CONTINUING SUPPORT FOR THE UNION OR THE STRIKE.

THE EMPLOYER COULD NOT FIRE THESE EMPLOYEES FOR THEIR ALLEGED LACK OF UNION INVOLVEMENT AND I SUBMIT THAT THIS BOARD DOES NOT HAVE THE RIGHT IN LAW TO THAT WHICH IS CLEARLY PROHIBITED TO THE EMPLOYER.

IT MUST BE STRESSED THAT THE LABOUR RELATIONS ACT PUTS NO REQUIREMENTS ON A STRIKING EMPLOYEE. NO REFERENCE IS MADE OF THE NEED TO WALK A PICKET LINE OR TO OTHERWISE ENGAGE IN STRIKE OR UNION ACTIVITY. WHILE THE EMPLOYMENT RELATIONSHIP IS NORMALLY EVIDENCED BY AN EMPLOYEE WORKING FOR HIS EMPLOYER, THE EFFECT OF SECTION 1(2) IS TO CONTINUE THIS RELATIONSHIP EVEN THOUGH THE EMPLOYEES DOES NOT SHOW UP FOR WORK. THUS IT WOULD APPEAR THAT THERE ARE NO ACTIONS WHICH A STRIKER MUST UNDERTAKE TO RETAIN HIS STATUS AS AN EMPLOYEE. AN EMPLOYEE MAY, BY SOME ACT, SEVER THE EMPLOYMENT RELATIONSHIP. SUCH AN ACT MIGHT INVOLVE THE SUBMISSION TO HIS EMPLOYER OF A FORMAL NOTICE OF RESIGNATION. WITHOUT SUCH A DELIVERATE ACT, HOWEVER, IT SEEMS INCONGRUOUS TO HOLD THAT A PERSON CAN TERMINATE HIS STATUS AS AN EMPLOYEE MERELY BY NOT ENGAGING IN CERTAIN ACTIVITIES. AS PROFESSOR J. FINKELMAN SAID IN AN EARLY ARBITRATION CASE:

"THE ACT OF QUITTING A JOB HAS IN IT A SUBJECTIVE AS WELL AS AN OBJECTIVE ELEMENT. AN EMPLOYEE WHO WISHES TO LEAVE THE EMPLOY OF THE COMPANY

MUST FIRST RESOLVE TO DO SO AND HE MUST DO SOMETHING TO CARRY HIS RESOLUTION INTO EFFECT" (EMPHASIS ADDED). ANCHOR CAP AND CLOSURE CORPORATION OF CANADA LTD., (1949), 1 L.A.C. 222 (FINKELMAN).

THERE ARE TWO CASES IN WHICH IT WAS INDICATED THAT IT IS UP TO A STRIKING EMPLOYEE, OR HIS UNION, TO SHOW THAT HE IS, IN FACT, ON STRIKE. ONE SUCH CASE WAS THE BOARD DECISION IN J. McLEOD AND SONS LIMITED, WHERE IT WAS HELD THAT "IN GENERAL, A STRIKING UNION IS IN A BETTER POSITION TO ADDUCE EVIDENCE RESPECTING THE STATUS OF ITS MEMBERS WHO ARE ON STRIKE RATHER THAN THE EMPLOYER OR OTHER TRADE UNION APPLYING FOR CERTIFICATION". THIS STATEMENT WAS MADE IN THE COURSE OF EXAMINING THE STATUS OF TWO PERSONS WHO HAD GONE ON STRIKE AGAINST THEIR EMPLOYER. NEITHER OF THE EMPLOYEES APPEARED BEFORE THE BOARD, AND CONFLICTING TESTIMONY AS TO THEIR STATUS WAS GIVEN BY OTHER WITNESSES. INDEED AN OFFICER OF THE EMPLOYER TESTIFIED THAT BOTH HAD TOLD HIM THAT THEY WERE QUITTING THEIR JOBS. THE ABOVE STATEMENT, THEN, IF SEEN IN THIS CONTEXT, SEEMS TO INDICATE THAT A STRIKER, OR HIS UNION, MUST SHOW SOME EVIDENCE THAT HE IS COVERED BY SECTION 1(2). SUCH EVIDENCE COULD, IT IS CONTENDED, CONSIST SIMPLY OF SWORN TESTIMONY OF THE EMPLOYEE INVOLVED THAT HE CONSIDERS HIMSELF TO BE AN EMPLOYEE OF THE STRUCK COMPANY. IT IS IMPORTANT TO NOTE THAT IN THE McLEOD CASE THE BOARD DECIDED THAT OTHER STRIKERS WERE STILL EMPLOYEES LARGELY ON THE BASIS OF TESTIMONY ON THEIR PART THAT THEY STILL REGARDED THEMSELVES EMPLOYEES OF THE STRUCK COMPANY EVEN THOUGH THEY HAD SECURED OTHER EMPLOYMENT.

THE SECOND CASE IS THAT OF RE ALLANSON [1971] O.R. 209 (ONT. C.A.). THE BACKGROUND OF THE CASE WAS THAT PRESENT AND RETIRED EMPLOYEES OF AN EMPLOYER WERE ENTITLED TO CERTAIN SUMS FROM A TRUST FUND, AND THE QUESTION AROSE AS TO WHETHER EMPLOYEES WHO HAD GONE OUT ON STRIKE BUT NOT RETURNED WERE ENTITLED TO PART OF THE PROCEEDS. THE TRUSTEES OF THE FUND APPLIED TO THE COURT FOR DIRECTIONS ON THIS AND A NUMBER OF OTHER ISSUES. THE COURT OF APPEAL, CITING SECTION 1(2) OF THE LABOUR RELATIONS ACT, HELD THAT THE PERSONS STILL ON STRIKE WERE TO BE REGARDED AS EMPLOYEES. ARNUP J.A. (FOR THE COURT) IN DEALING WITH THE QUESTION OF WHO WAS ON STRIKE STATED:

"I THINK THE FACTS NEED TO BE INVESTIGATED AND A REFERENCE SHOULD BE DIRECTED... IT MAY TURN OUT THAT OF THE THIRTY-SEVEN PERSONS NONE IS ENTITLED, BUT I THINK THAT PERSONS IN THAT GROUP SHOULD HAVE AN OPPORTUNITY OF PROVING AFFIRMATIVELY (WHICH IS MY VIEW IS WHAT THEY MUST DO) THAT THEY ARE TO BE REGARDED AS BEING STILL IN THE EMPLOYMENT OF THE COMPANY ON DECEMBER 31, 1969."

IT SHOULD BE NOTED THAT THERE WAS NO EVIDENCE BEFORE THE COURT AS TO WHETHER THE INDIVIDUALS ON STRIKE STILL REGARDED THEMSELVES AS

EMPLOYEES. THE TRUSTEES LIKEWISE HAD NO SUCH INFORMATION. BASICALLY THEN, THE COURT WAS DECIDING THAT RATHER THAN HAVE THE TRUSTEES SEEK TO DETERMINE WHO WAS STILL AN EMPLOYEE, THE STRIKERS HAD TO COME FORWARD TO PROVE THEIR STATUS. THERE IS NOTHING IN THE JUDGMENT TO INDICATE THAT TESTIMONY BY THE STRIKERS THEMSELVES WOULD NOT BE SUFFICIENT TO DO SO.

IT SHOULD BE BORNE IN MIND THAT THE BOARD DOES NOT HAVE A WIDE DISCRETION TO DETERMINE WHO IS AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(2), AND FOR THE PURPOSES OF HOLDING A VOTE UNDER SECTION 49. THE SAME PRINCIPLES DO NOT APPLY AS IN INSTANCES WHERE THE BOARD IS DETERMINING WHETHER AN INDIVIDUAL IS AN EMPLOYEE AS OPPOSED TO BEING A PERSON EITHER EXERCISING MANAGERIAL FUNCTIONS OR EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE REASON FOR THIS IS THAT THE WIDE DISCRETION GIVEN TO THE BOARD IS IN FACT NOT TO DETERMINE WHO IS AN EMPLOYEE, BUT RATHER TO DETERMINE WHO FITS INTO THESE OTHER TWO CATEGORIES. NOTE THE WORDING OF SECTION 1(3):

"SUBJECT TO SECTION 80, FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE

(B) WHO, IN THE OPINION OF THE BOARD EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS."

FOR PRACTICAL PURPOSES THE WORDING OF THIS SECTION HAS GENERALLY MEANT THAT THE BOARD HAD HAD A WIDE DISCRETION TO DETERMINE, BY ELIMINATION, JUST WHO IS AN EMPLOYEE WITHIN THE MEANING OF THE ACT, AND IN EXERCISING THIS DISCRETION THE BOARD HAS BEEN GUIDED BY ITS OWN POLICY DETERMINATIONS. (SEE FERRANTI-PACKARD ELECTRIC LTD. O.L.R.B. M.R. SEPTEMBER 68, P. 572). THIS DISCRETION, HOWEVER CLEARLY DOES NOT EXTEND TO GIVING THE BOARD THE RIGHT TO SEPARATE OUT EMPLOYEES FROM NON-EMPLOYEES ON THE BASIS OF WHETHER OR NOT TIME WAS SPEND WALKING A PICKET LINE. A CASE WHICH IS RELEVANT TO THE ISSUE OF THE BOARD'S JURISDICTION IN THIS REGARD IS THAT OF BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 389 V. MANITOBA LABOUR BOARD (1967) 67 C.L.L.C. PARA 14,042 (MAN. CT. OF Q.B.). IN THAT CASE AN EMPLOYER FIRST DISMISSED ALL OF HIS EMPLOYEES WHEN, AS A RESULT OF A DISPUTE, THEY REFUSED TO REPORT FOR WORK, AND THEN PROCEEDED TO APPLY TO THE MANITOBA LABOUR BOARD FOR AN ORDER REVOKING THE UNION'S CERTIFICATION. THE BOARD ACCEDED TO THIS REQUEST, HOLDING THAT SINCE THERE WERE NO EMPLOYEES IN THE UNIT FOR WHICH THE UNION HAS BEEN CERTIFIED, THE CERTIFICATION NO LONGER HAD ANY APPLICATION. THE MANITOBA COURT OF QUEEN'S BENCH, HOWEVER, QUASHED THE REVOCATION ORDER, HOLDING THAT THE LABOUR RELATIONS ACT R.S.M. 1954, CAP. 132 DID NOT PERMIT THE BOARD TO DECLARE THAT A PERSON CEASED TO BE AN EMPLOYEE BY REASON MERELY OF HIS CEASING TO WORK AS A RESULT OF A STRIKE. STATED MR JUSTICE DICKSON (AT P. 11,300):

"IT IS TRUE THAT SECTION 59(1) OF THE ACT

EMPOWERS THE BOARD TO DECIDE WHETHER A PERSON IS AN EMPLOYEE. THIS GIVES THE BOARD JURISDICTION TO DETERMINE WHETHER SPECIFIC PERSONS FALL WITHIN THE CATEGORIES OF PERSONS EXCLUDED FROM THE DEFINITION OF EMPLOYEE, BUT GOES NO FURTHER. MORE SPECIFICALLY, IT DOES NOT PERMIT THE BOARD TO DECLARE THAT A PERSON CEASES TO BE AN EMPLOYEE BY REASON OF CEASING TO WORK AS THE RESULT OF A STRIKE. SECTION 2, SUBSECTION (2), OF THE ACT SPECIFICALLY PROVIDES THAT NO PERSON SHALL CEASE TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK AS THE RESULT OF A STRIKE OR BY REASON ONLY OF DISMISSAL CONTRARY TO THE ACT."

WHILE IT MAY BE ARGUED THAT THERE ARE POLICY REASONS FOR THE BOARD TO DECLARE THAT AN INDIVIDUAL MUST ENGAGE IN CERTAIN ACTIVITIES TO RETAIN HIS STATUS AS A STRIKER, POLICY REASONS ALONE ARE NOT SUFFICIENT TO GIVE THE BOARD THE POWER TO END A RIGHT CONFERRED BY STATUTE [SHOPMEN'S LOCAL UNION No. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS V. BRAYSHAW'S STEEL LTD. AND UNITED STEELWORKERS OF AMERICA (1971) 71 C.L.L.C. PARA. 14,084 (ONT. C.A.)]. FURTHER, JUST AS THE MISINTERPRETATION OF THE WORD "PERSON" IN JARVIS V. ASSOCIATED MEDICAL SERVICES LTD. ET AL (1964) 44 D.L.R. (2D) 407 WAS HELD BY THE SUPREME COURT OF CANADA TO BE GROUNDS FOR QUASHING A BOARD DECISION, SO THE SAME RESULT MIGHT OCCUR IF A COURT FELT THE BOARD HAD EXCEEDED ITS JURISDICTION BY MISINTERPRETING THE WORD "EMPLOYEE" AS IT RELATED TO SECTION 1(2).

IN MY OPINION THE BOARD IN DENYING IN THIS INSTANCE AN OPPORTUNITY TO VOTE TO SOMEONE ENTITLED TO DO SO, WOULD BE VIOLATING THE RULES OF NATURAL JUSTICE. SUPPORT FOR THIS CONTENTION IS TO BE FOUND IN THE DECISION OF THE BRITISH COLUMBIA SUPREME COURT DECISION IN REGINA V. LABOUR RELATIONS BOARD FOR BRITISH COLUMBIA, EX PARTE ELGERT SPRUCE MILLS LTD. (1965) 49 D.L.R. (2D) 55. THERE, PRIOR TO GRANTING A UNION CERTIFICATION, THE B.C. BOARD HAD ORDERED A VOTE IN RELATION TO THE APPLICATION. THE VOTERS LIST AS ESTABLISHED BY THE BOARD INCLUDED ALL EMPLOYEES WHO WERE IN THE EMPLOYER'S SERVICE AT THE DATE OF THE CERTIFICATION APPLICATION, THOUGH AT THE DATE OF THE VOTE 21 OF THESE HAD, IN FACT, LEFT THE EMPLOYER'S SERVICE. OF THE 21 EX-EMPLOYEES NINE VOTED, THOUGH THE OTHER 12 WERE NOT GIVEN AN OPPORTUNITY TO CAST BALLOTS. ON THE GROUNDS THAT IT WAS A DENIAL OF NATURAL JUSTICE (AND A BREACH OF THE ACT TO DENY CERTAIN POTENTIAL VOTERS A CHANCE TO VOTE, THE COURT QUASHED THE UNION'S CERTIFICATION AND ORDERED A NEW NOTE. THE BRITISH COLUMBIA COURT OF APPEAL, AT (1965) 65 C.L.L.C. PARA. 14,096, UPHOLD THE DECISION QUASHING THE UNION'S CERTIFICATION, THOUGH FOR A DIFFERENT REASON. THAT COURT HELD THAT IN FACT NONE OF THE EX-EMPLOYEES HAD BEEN QUALIFIED TO VOTE. THIS APPEAL COURT DECISION, HOWEVER, DID NOT DEAL WITH THE FINDING OF THE LOWER COURT THAT IF A PERSON HAS THE

RIGHT TO VOTE, BUT IS DENIED THE OPPORTUNITY TO VOTE, THEN ANY AWARD BASED ON THAT VOTE MAY BE QUASHED.

IN THE INSTANT CASE THE EVIDENCE ESTABLISHES THAT THE STRIKE AT THE TIME OF THE APPLICATION OF THIS CAUSE WAS GOING ON FOR ELEVEN MONTHS. TOM PERRY JOINED THE STRIKE FROM ITS OUTSET, HE CONTINUED TO PICKET FOR FIVE MONTHS AT THE END OF WHICH TIME HE SECURED ANOTHER JOB BECAUSE HE NEEDED MONEY IN ORDER TO SUPPORT HIS WIFE AND CHILDREN. HE DID NOT RECEIVE AN UNEMPLOYMENT INSURANCE SEPARATION CERTIFICATE FROM BROOKERS, THE INTERVENER COMPANY. THE EVIDENCE IS CLEAR THAT TOM PERRY DID NOT QUIT HIS JOB AT THE STRUCK PLANT AND THE EVIDENCE OF PERRY IS CRYSTAL CLEAR THAT HE STILL CONSIDERS HIMSELF AN EMPLOYEE OF BROOKERS AND WOULD RETURN TO WORK AT BROOKERS IF RECALLED AND IF THE STRIKE WAS SETTLED.

CAN THERE BE THE SLIGHTEST DOUBT FROM THE FOREGOING EVIDENCE THAT TOM PERRY HAS CEASED WORKING ONLY FROM BROOKERS BECAUSE OF A LEGAL STRIKE. BY WHAT LOGICAL REASONING COULD ANYONE COME TO THE CONCLUSION IN LIGHT OF THE CLEAR AND UNAMBIGUOUS LANGUAGE OF SECTION 1(2) OF THE LABOUR RELATIONS ACT THAT PERRY IS NOW NO LONGER AN EMPLOYEE OF BROOKERS.

AS AN ADMINISTRATIVE TRIBUNAL RESPONSIBLE FOR THE ADMINISTRATION OF THE ONTARIO LABOUR RELATIONS ACT WE SURELY MUST BE CONSCIOUS AND AWARE OF THE REAL EVERYDAY WORLD AROUND US. DRIFTING IN HIGH RAREFIED TECHNICAL LEGAL CLOUDS IS SURELY THE PRESERVE OF HONOURABLE MEMBERS OF THE HOUSE OF LORDS AND OTHER SUPERIOR JUDICIAL BODIES. OUR DOWN TO EARTH CONCERN IS WITH RAW INDUSTRIAL RELATIONS, THE CONFRONTATIONS ON THE PICKET LINES, UNPARLIAMENTARY LANGUAGE SUCH AS "SCAB" ARE MORE REAL TO US THAN FINE TECHNICAL POINTS OF EVIDENTARY LAW WHEREIN A WORKER INVOLVED IN A LIFE AND DEATH INDUSTRIAL ECONOMIC STRUGGLE CAN HAVE THE RUG PULLED FROM UNDER HIM BECAUSE A TRIBUNAL LIKE OURS TAKE UNTO THEMSELVES LEGISLATIVE POWERS BEYOND THEIR JURISDICTION.

THE REAL WORLD OF INDUSTRIAL CONFLICT IS A WORLD WHERE SOME STRIKERS HAVE INITIALLY VOTED AGAINST STRIKE ACTION BUT IN THE DEMOCRATIC MANNER HAVE GONE ALONG WITH THE MAJORITY DECISION. IN THE REAL WORLD SOME STRIKERS NEVER MARCH IN A PICKET LINE EITHER BECAUSE OF RELIGIOUS, ETHICAL OR OTHER SCRUPLES OR BECAUSE THEY EMOTIONALLY OR PHYSICALLY REJECT THE PICKET LINE ATMOSPHERE. SOME STRIKERS ARE NOT EVEN MEMBERS OF THE UNION, OTHERS DO NO MORE THAN PRAY FOR THE SETTLEMENT OF A STRIKE. WE HEAR MUCH OF CONFRONTATION ON THE PICKET LINE BUT VERY LITTLE OF PEACEFUL STRIKES WAGED BY REASONABLE CIVILISED LAW ABIDING STRIKERS.

THE IMPACT AND EFFECT OF THE MAJORITY DECISION IN THIS MATTER CAN ONLY SIGNAL A CALL TO MORE MILITANCY IN PURSUIT OF STRIKE OBJECTIVES AND PERHAPS ACTIVATE A WORKERS DRIVE TO HAVE A CLEAR DECLARATION OF WORKERS RIGHTS EMBODIED IN THE LABOUR RELATIONS ACT.

IN MY OPINION THE MAJORITY DECISION IN THIS MATTER REPRESENTS

A MAJOR SET BACK IN THE DEVELOPMENT OF ENLIGHTENED LABOUR RELATIONS, THE DECISION UNDERMINES THE VERY FOUNDATIONS OF THE LABOUR RELATIONS ACT. ENSHRINING THE RIGHT OF STRIKE-BREAKERS TO VOTE ON THE QUESTION OF WHETHER THE STRIKING UNION WILL CONTINUE TO REPRESENT THE WORKERS, AND AT THE SAME TIME DISENFRANCHISING TOM PERRY AND THE OTHER EIGHT STRIKERS FROM VOTING ON THIS CRUCIAL MATTER RELATING TO THEIR WORK LIFE, THROWS THE WHOLE CONCEPT OF CHECKS AND BALANCES INHERENT IN THE LABOUR RELATIONS ACT INTO DISARRAY.

THE PREAMBLE OF THE LABOUR RELATIONS ACT DECLARES THAT "IT IS IN THE PUBLIC INTEREST OF THE PROVINCE OF ONTARIO TO FURTHER HARMONIOUS RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES BY ENCOURAGING THE PRACTICE AND PROCEDURE OF COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS AS THE FREELY DESIGNATED REPRESENTATIVES OF EMPLOYEES."

SECTION 8 OF THE INTERPRETATION ACT R.S.O. 1970, CHAPTER 225 PROVIDES THAT 'THE PREAMBLE OF AN ACT SHALL BE DEEMED A PART THEREOF AND IS INTENDED TO ASSIST IN EXPLAINING THE PURPORT AND OBJECT OF THE ACT.

SECTION 10 OF THE INTERPRETATION ACT READS AS FOLLOWS:

"EVERY ACT SHALL BE DEEMED TO BE REMEDIAL, WHETHER ITS IMMEDIATE PURPORT IS TO DIRECT THE DOING OF ANYTHING THAT THE LEGISLATURE DEEMS TO BE FOR THE PUBLIC GOOD OR TO PREVENT OR PUNISH THE DOING OF ANY THING THAT IT DEEMS TO BE CONTRARY TO THE PUBLIC GOOD, AND SHALL ACCORDINGLY RECEIVE SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION AS WILL BEST ENSURE THE ATTAINMENT OF THE OBJECT OF THE ACT ACCORDING TO ITS TRUE INTENT, MEANING AND SPIRIT. R.S.O. 1960, c. 191, s.10.

IN THE INTEREST OF PUBLIC GOOD AND TO BEST ENSURE THE PURPORT AND OBJECTS OF THE LABOUR RELATIONS ACT AND TO FURTHER THE ACTS TRUE INTENT, MEANING AND SPIRIT AND HAVING CAREFULLY REVIEWED THE EVIDENCE IN THIS MATTER.

I WOULD FIND THAT TOM PERRY AND THE OTHER EIGHT EMPLOYEES IN GROUP NO. 5 ARE EMPLOYEES OF BROOKERS AND THAT THEY FALL WITHIN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT AND ARE ENTITLED TO VOTE IN THE EVENT A REPRESENTATIVE VOTE IS DIRECTED IN THIS MATTER.

THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING, TO INQUIRE INTO THE ORIGINATION OF THE STATEMENTS FILED BY THE APPLICANT AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED AND ALL OUTSTANDING ISSUES.

4285-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 2679 (COMPLAINANT) V. CORONET FURNITURE MANUFACTURING
COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: JEFFREY SACK AND RUDI BRANDT FOR THE COMPLAINANT; S. C. BERNARDO AND M. SHAPINKA FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: DECEMBER 7, 1973.

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2. THIS COMPLAINT IS WITHDRAWN AS IT APPLIES TO SETHI MALVINDER SINGH AND RAM SINGH AT THE REQUEST OF THE COMPLAINANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

3. THE EVIDENCE ESTABLISHED THAT THE RAILWAY STRIKE WHICH COMMENCED IN JULY 1973 AND CONTINUED INTO SEPTEMBER 1973 SO ADVERSELY AFFECTED THE COMPANY'S EFFORTS TO BRING IN RAW MATERIALS AND SHIP OUT FINISHED PRODUCTS THAT IT WAS FORCED TO CURTAIL ITS PRODUCTION. WHEN PRODUCTION WAS DECREASED, THE COMPANY LAID OFF SOME OF ITS JUNIOR EMPLOYEES INCLUDING P. D. VERMA, BALVINDER SINGH AND SARDUL SINGH. WHEN THESE EMPLOYEES ATTEMPTED, ON THE DAY FOLLOWING THEIR LAYOFF, TO OBTAIN SEPARATION CERTIFICATES FROM THE COMPANY FOR USE AT MAN-POWER, THE COMPANY OFFICIALS ATTEMPTED TO DISSUADE THEM FROM SEEKING THE CERTIFICATES AND ADVISED THEM THAT SUCH CERTIFICATES WERE UN-NECESSARY AND WOULD TEND TO INDICATE THAT THEY HAD SEVERED THEIR EMPLOYMENT WITH THE RESPONDENT. THEY WERE ADVISED THAT THEY WERE LAID OFF BECAUSE OF THE RAILWAY STRIKE AND THAT THEY WOULD BE RECALLED IN A MATTER OF WEEKS. IT IS READILY APPARENT THAT THE RESPONDENT, AT THAT TIME, WAS ATTEMPTING TO PRESERVE THE EMPLOYMENT RELATIONSHIP WITH THE THREE AGGRIEVED PERSONS.

4. HOWEVER, THE EVIDENCE ALSO ESTABLISHED THAT CERTAIN COMPANY OFFICIALS SUBSEQUENTLY DEMONSTRATED THEIR ANTI-UNION ANIMUS BY QUESTIONING P. D. VERMA AND BALVINDER SINGH ABOUT THEIR UNION ACTIVITIES AND BY MAKING CERTAIN PROMISES TO THEM. THE RESPONDENT FAILED TO RECALL THE THREE AGGRIEVED PERSONS AFTER THE RAILWAY STRIKE ENDED BUT SUBSEQUENTLY REHIRED TWO FORMER EMPLOYEES.

5. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT ALTHOUGH THE LAYOFFS WERE CAUSED BY REASON OF PROPER BUSINESS CONSIDERATIONS, THE RESPONDENT'S REFUSAL TO RECALL THE EMPLOYEES WAS MOTIVATED BY THE RESPONDENT'S ANTI-UNION ANIMUS CONTRARY TO SECTION 58(A) OF THE ACT.

6. THE EVIDENCE ESTABLISHED, HOWEVER, THAT BALVINDER SINGH AND

SARDUL SINGH ARE PRESENTLY EMPLOYED IN OTHER JOBS AND DO NOT SEEK REINSTATEMENT. THE FEW DAYS THESE TWO EMPLOYEES WERE OFF WORK BEFORE FINDING THEIR NEW JOBS WERE WITHIN THE PERIOD OF TIME THEY WOULD HAVE BEEN OFF WORK BY REASON OF THEIR LAYOFF WHICH WAS CAUSED BY THE RAILWAY STRIKE. THEY FOUND NEW JOBS BEFORE THE COMPANY WAS IN A POSITION TO RECALL THEM OR TO REHIRE OTHER EMPLOYEES. WE ACCORDINGLY FIND THAT BALVINDER SINGH AND SARDUL SINGH DID NOT LOSE ANY WAGES BECAUSE OF THE RESPONDENT'S BREACH OF THE ACT. WE ACCORDINGLY AWARD NO COMPENSATION TO BALVINDER SINGH OR SARDUL SINGH.

7. THE BOARD DETERMINES THAT P. D. VERMA SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM AT THE TIME OF HIS LAYOFF. HOWEVER, HAVING REGARD TO THE TIME THAT THE COMPANY REHIRE THE FORMER EMPLOYEES AND THE FACT THAT VERMA WAS IN INDIA AND UNAVAILABLE FOR WORK FOR A PERIOD OF TIME, WE FIND THAT VERMA IS ONLY ENTITLED TO RECEIVE COMPENSATION FOR THAT PERIOD AFTER HIS RETURN FROM INDIA. WE ACCORDINGLY DIRECT THAT THE COMPANY PAY TO VERMA THE SUM OF \$450.00 AS FULL COMPENSATION FOR THE LOSS OF WAGES SUSTAINED BY HIM AS A RESULT OF THE RESPONDENT'S REFUSAL TO RE-EMPLOY HIM FOR THE PERIOD BETWEEN THE DATE OF HIS LAYOFF AND THE DATE OF THE HEARING IN THIS MATTER. WE FURTHER DIRECT THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON ANY ADDITIONAL AMOUNT OWING TO VERMA BETWEEN THE DATE OF THE HEARING AND THE DATE OF HIS REINSTATEMENT. SHOULD THE PARTIES FAIL TO AGREE ON THE AMOUNT OF SUCH ADDITIONAL COMPENSATION, A FURTHER HEARING WILL BE DIRECTED AT THE REQUEST OF EITHER PARTY FOR THE PURPOSE OF ASCERTAINING THE ADDITIONAL AMOUNT, IF ANY, OWING BY THE RESPONDENT TO VERMA AS A RESULT OF THE RESPONDENT'S FAILURE TO RE-EMPLOY HIM.

DECISION OF BOARD MEMBER J. D. BELL: DECEMBER 7, 1973.

I AGREE WITH THE MAJORITY OF THE BOARD THAT THE LAYOFFS OF THE EMPLOYEES WERE CAUSED BY REASON OF PROPER BUSINESS CONSIDERATIONS. A REVIEW OF THE EVIDENCE DOES NOT CONVINCE ME THAT THE RESPONDENT'S FAILURE TO RECALL THE THREE EMPLOYEES WAS MOTIVATED BY THE RESPONDENT'S ANTI-UNION ANIMUS.

I WOULD DISMISS THIS APPLICATION.

4580-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PEEL COUNTY BOARD OF EDUCATION EMPLOYEES' ASSOCIATION (PREDECESSOR TRADE UNION).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: S. R. HENNESSY AND R. CHISHOLM FOR THE APPLICANT; D. E. HOUCK, R. STEADMAN, H.J.A. BROWN, AND M. CHAPMAN FOR THE RESPONDENT; NO ONE APPEARING FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: DECEMBER 10, 1973.

1. THE APPLICANT HAS APPLIED TO THE BOARD UNDER SECTION 54 OF THE ACT FOR A DECLARATION THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS "THE APPLICANT") HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR, THE PEEL COUNTY BOARD OF EDUCATION EMPLOYEES' ASSOCIATION, (HEREINAFTER REFERRED TO AS "THE PREDECESSOR UNION"), BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

2. THE RESPONDENT IN ITS REPLY TO THE APPLICATION STATED THE FOLLOWING:

"THIS IS A MATTER WHICH RELATES TO A CHANGE OF BARGAINING AGENTS AND THE PEEL COUNTY BOARD OF EDUCATION DOES NOT HAVE FULL KNOWLEDGE OF THE STATEMENTS ALLEGED AND ACCORDINGLY REQUESTS A FULL HEARING SO THAT THE APPLICANT CAN ESTABLISH THE ALLEGATIONS."

(UNDERLINING ADDED BY THE BOARD)

3. AT THE INCEPTION OF THE HEARING THE RESPONDENT INDICATED THAT THE PURPOSE OF THE PROCEEDINGS WAS TWO FOLD. FIRSTLY, IT WAS FOR THE PURPOSE OF PUTTING THE APPLICANT TO THE STRICT PROOF OF ESTABLISHING "A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION", AND, SECONDLY, EVEN IF THE BOARD SHOULD SO FIND, TO URGE THE BOARD TO DIRECT A REPRESENTATION VOTE FOR REASONS TO BE SET OUT LATER IN THIS DECISION.

4. THE APPLICANT PROCEEDED TO CALL WITNESSES, TO FILE EVIDENCE AND TO DO ALL THINGS NECESSARY, IN ITS DISCRETION, TO SATISFY THE BOARD THAT THE TRANSACTION CITED IN ITS APPLICATION IN SUPPORT OF ITS REQUEST FOR A DECLARATION OF SUCCESSOR STATUS TRANSPIRED.

5. AFTER THE CLOSE OF THE EVIDENCE THE BOARD INDICATED TO COUNSEL FOR THE APPLICANT THAT SINCE IT WAS INCUMBENT UPON THE APPLICANT TO ESTABLISH "THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION" THAT HE FIRST PROCEED WITH ARGUMENT.

6. THE RESPONDENT IN RESPONSE TO THE APPLICANT'S SUBMISSIONS INDICATED THERE WERE TWO FLAWS IN THE PROCEDURES ADOPTED BY THE PREDECESSOR IN CAUSING THE MERGER TO BE BROUGHT ABOUT.

7. IT WAS SUGGESTED THAT THE ACTIVE PARTICIPATION OF MRS. CHISHOLM, A C.U.P.E. BUSINESS REPRESENTATIVE, IN ASSISTING THE PREDECESSOR TO AMEND ITS CONSTITUTION AS A NECESSARY PRELUDE TO THE MERGER WAS PERVERSE. THAT IS TO SAY, THE ASSISTANCE CONFERRED BY MRS. CHISHOLM IN MAILING THE NOTICES OF THE MEETING FOR THE AMENDMENT AS WELL AS HER PRESENCE AT THE MATERIAL TIME THE BALLOTS WERE CAST WITH RESPECT TO THE AMENDMENT WAS AN UNDUE

INTERFERENCE IN "THE FREEDOM" OF THE MEMBERS IN CHOOSING A BARGAINING AGENT OF THEIR OWN CHOICE. IN SHORT, THE APPLICANT IS ACCUSED THROUGH THE EFFORTS OF MRS. CHISHOLM OF UNDULY INFLUENCING THE OUTCOME OF THE VOTE HELD AS A NECESSARY STEP TO THE MERGER RESOLUTION ITSELF.

8. THIS BOARD TAKES EXCEPTION TO THE PROCEDURE ADOPTED BY THE RESPONDENT IN SEEKING TO UNDERMINE THIS APPLICATION. IT IS PERFECTLY CONSISTENT WITH THE BOARD'S PROCESSES FOR ONE PARTY TO CAUSE ANOTHER PARTY BEFORE IT TO BE PUT TO THE STRICT PROOF OF THE EXISTENCE OR NON-EXISTENCE OF A SET OF FACTS. IT IS QUITE ANOTHER THING, HOWEVER, FOR THAT PARTY, AFTER ALL THE EVIDENCE IS IN, TO RAISE ALLEGATIONS WHICH IN EFFECT SUGGEST AN IMPROPRIETY AMOUNTING TO THE COMMITTAL OF AN UNFAIR LABOUR PRACTICE. THE BOARD IN SUCH CIRCUMSTANCES WILL REQUIRE THE PARTY IN MAKING ITS ALLEGATIONS TO ADHERE TO THE PROVISIONS OF S47 OF THE BOARD'S RULES OF PROCEDURE. THESE RULES WERE DESIGNED TO PERMIT A PARTY, WHO IS TO BE THE OBJECT OF ALLEGATIONS, SUFFICIENT TIME TO PREPARE A CASE IN ANSWER TO AN ALLEGED IMPROPRIETY. THUS, IN MAKING CHARGES, BOTH DISPATCH AND PARTICULARITY ARE THE SINE QUA NON OF ENTERTAINING EVIDENCE IN SUPPORT THEREOF. SHOULD THE PARTY MAKING THE ALLEGATIONS FAIL TO EXERCISE DISPATCH, THE BOARD USUALLY WILL REQUIRE A REASONABLE EXPLANATION RELATING TO THIS SHORTCOMING.

9. HERE THE RESPONDENT HAS RAISED AN ISSUE INVOLVING THE COMMITTAL BY THE APPLICANT OF A GRAVE IMPROPRIETY THROUGH THE VEHICLE OF PUTTING THE APPLICANT TO THE STRICT PROOF OF ESTABLISHING A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION. THIS, THE BOARD WILL NOT PERMIT AND DISMISSES THE RESPONDENT'S ALLEGATIONS ON THAT GROUND ALONE.

10. IN ANY EVENT, THE BOARD FURTHER FINDS THAT THE PROCEDURES ADOPTED BY THE PREDECESSOR AND APPLICANT IN THE INSTANT APPLICATION WERE ACCEPTABLE TO THE BOARD. IN EFFECTING THE MERGER THE BOARD IS SATISFIED THAT THE PREDECESSOR HAD COMPLIED WITH THE PROCEDURAL AND SUBSTANTIVE PROVISIONS OF ITS CONSTITUTION AND AMENDMENTS THERETO.

11. ALTERNATIVELY THE RESPONDENT SUBMITS THAT SHOULD THE BOARD FIND THAT A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION HAS TAKEN PLACE, A REPRESENTATION VOTE BE DIRECTED IN THAT A SUBSTANTIAL NUMBER OF THE MEMBERS OF THE PREDECESSOR WERE NOT AT THE MEETING WHEN THE MERGER WAS EFFECTED.

12. THIS BOARD IS SATISFIED THAT THE PREDECESSOR TOOK REASONABLE STEPS TO CAUSE NOTICE OF THE RELEVANT MEETINGS TO BE BROUGHT TO THE ATTENTION NOT ONLY OF ITS MEMBERS BUT ALSO TO THE EMPLOYEES AFFECTED BY THE MERGER WHO WERE INVITED TO BECOME MEMBERS AND THUS PARTICIPATE IN THE MERGER PROCEEDINGS. THE FACT THAT FEW CHOSE TO PARTICIPATE IN THE DELIBERATIONS CAUSING THE MERGER TO BE BROUGHT ABOUT CANNOT BE ATTRIBUTED TO THE PROCEDURES ADOPTED BY THE PREDECESSOR. FURTHERMORE, IT IS NOTED THAT THERE WAS NO SUGGESTION (AND IN FACT NO EMPLOYEES CHOSE TO MAKE AN APPEARANCE AT THE HEARING) THAT ANY OF THE EMPLOYEES AFFECTED AT ANY MATERIAL TIME OBJECTED TO THE MERGER.

13. FOR THESE REASONS, THE BOARD DENIES THE RESPONDENT'S ALTERNATIVE REQUEST THAT A REPRESENTATION VOTE BE DIRECTED.

14. ACCORDINGLY, THE BOARD FINDS AND DECLARES PURSUANT TO SECTION 54(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT HAS BY REASON OF A MERGER WITH THE PREDECESSOR TRADE UNION, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR TRADE UNION, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT DATED SEPTEMBER 4, 1973, BETWEEN THE RESPONDENT AND THE PREDECESSOR TRADE UNION.

3491-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. COOPER CONSTRUCTION COMPANY (EASTERN) LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: STANLEY SIMPSON, KEN CHILDS AND FRANK MURPHY FOR THE APPLICANT; F. R. VON VEN, F. B. REAUME AND W. P. COOPER FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 14, 1973.

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4. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED MAY 28, 1973, AND THE REPRESENTATIONS OF THE PARTIES THEREON. THE ISSUES BEFORE THE BOARD WERE, FIRSTLY, WAS THE RESPONDENT THE EMPLOYER OF THE TWO EMPLOYEES AFFECTED BY THIS APPLICATION, AND, IF THE RESPONDENT WAS THEIR EMPLOYER; DID KEN ADAM, ONE OF THE EMPLOYEES AFFECTED BY THIS APPLICATION, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT?

5. THIS APPLICATION FOR CERTIFICATION WAS FILED ON MARCH 22, 1973. THE RESPONDENT FILED WEEKLY TIME REPORTS FOR THE WEEK ENDING MARCH 25, 1973, WITH RESPECT TO KEN ADAM AND WESLEY McDONALD. THESE TIME REPORTS INDICATE THAT THE TIME OF ADAM AND McDONALD WAS KEPT BY COOPER CONSTRUCTION COMPANY. McDONALD TELEPHONED THE RESPONDENT ABOUT COLLECTING HIS PAY AND WAS TOLD BY THE PERSON HE SPOKE TO WHERE TO PICK UP HIS PAY AND THAT THE RESPONDENT'S PAYMASTER HAD GIVEN IT TO KEN ADAM. HE WENT TO THE JOB SITE AND KEN ADAM GAVE HIM A PAY ENVELOPE. THE RESPONDENT FILED A COPY OF A RECEIPT DATED MARCH 28, 1973, WHICH IS SIGNED BY McDONALD AND ACKNOWLEDGES RECEIPT OF HIS PAY FOR THE PERIOD FROM MARCH 19 TO MARCH 25, 1973, FROM HAMILTON REINFORCING CO. (HEREINAFTER REFERRED TO AS "HAMILTON").

6. THE EVIDENCE OF KEN ADAM REVEALS THAT HE WAS EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION, THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR FIVE YEARS AND THAT HIS BOSS ON

THE DATE OF THE MAKING OF THE APPLICATION WAS BOB MORLEY (THE RESPONDENT'S SUPERINTENDENT). IMMEDIATELY THEREAFTER, IN HIS EVIDENCE BEFORE THE EXAMINER, KEN ADAM STATED THAT HE WAS THE BOSS ON THE JOB FOR HAMILTON ON THE DATE OF THE MAKING OF THE APPLICATION. KEN ADAM ALSO STATED BEFORE THE EXAMINER THAT HAMILTON HAS BEEN A PARTNERSHIP SINCE 1967 WITH HIS BROTHER RON ADAM. HE ALSO STATED THAT HAMILTON VERBALLY AGREED TO DO ALL REINFORCING STEEL FOR THE RESPONDENT WHICH PAYS THE WAGES FOR HIMSELF AND HIS BROTHER. HE FURTHER STATED THAT THE RESPONDENT KEEPS HAMILTON'S RECORDS IN ITS OFFICE AND HAMILTON DOES NOT HAVE AN OFFICE, TELEPHONE OR OFFICE STAFF. THE WORKMEN'S COMPENSATION IS PAID BY THE RESPONDENT. HIS HOURLY RATE IS DECIDED BY THE RESPONDENT AND HE IS PAID OVERTIME AT DOUBLE TIME AFTER 4.30 P.M. RON ADAM IS A FOREMAN ABOVE KEN ADAM.

7. THE RESPONDENT DEDUCTS AND REMITS THE INCOME TAX, UNEMPLOYMENT INSURANCE AND WORKMEN'S COMPENSATION FROM AND FOR RON AND KEN ADAM. KEN ADAM IS UNABLE TO REFUSE TO WORK FOR THE RESPONDENT. THERE WAS ALSO EVIDENCE IN THE REPORT OF THE EXAMINER WHICH INDICATES THAT HAMILTON WAS REGISTERED AS A PARTNERSHIP ON DECEMBER 12, 1967, AND THAT THE PARTNERS ARE KEN ADAM, RONALD ADAM AND NORMAN ADAM. THIS IS AT VARIANCE WITH THE EVIDENCE OF KEN ADAM WHO GAVE EVIDENCE THAT HAMILTON HAS BEEN A PARTNERSHIP SINCE 1967 WITH HIS BROTHER RON ADAM. THERE IS ALSO DOCUMENTARY EVIDENCE IN THE REPORT OF THE EXAMINER WHICH INDICATES THAT HAMILTON'S ACCOUNT WITH THE WORKMEN'S COMPENSATION BOARD HAS BEEN CLOSED SINCE DECEMBER 31, 1968.

8. THE EVIDENCE OF KEN ADAM REGARDING HIS EMPLOYMENT STATUS CONTAINS CONTRADICTIONS ON THE NATURE OF HIS RELATIONSHIP WITH THE RESPONDENT. IN ADDITION, HAMILTON APPEARS TO HAVE AN EPHEMERAL EXISTENCE WITH NO CLEAR AND UNEQUIVOCAL INDICATION OF ITS EXISTENCE AND FUNCTIONING ON MARCH 22, 1973. ON THE BALANCE OF THE EVIDENCE WE FIND THAT KEN ADAM WAS, ON MARCH 22, 1973, UNDER A DUTY OF RENDERING PERSONAL SERVICES FOR THE RESPONDENT AND THAT THE RESPONDENT HAD THE RIGHT TO CONTROL KEN ADAM'S WORK THROUGH ITS SUPERINTENDENT, BOB MORLEY. IN THIS REGARD, REFERENCE MAY BE HAD TO THE BELCOURT CONSTRUCTION (OTTAWA) LIMITED CASE, [1971] OLRB REP. 321. ON THE BASIS OF THESE FINDINGS, WE FURTHER FIND THAT KEN ADAM WAS EMPLOYED BY THE RESPONDENT AS A RODMAN ON MARCH 22, 1973. WE ALSO FIND THAT AN EFFORT WAS MADE BY THE RESPONDENT TO CREATE THE IMPRESSION THAT McDONALD WAS EMPLOYED BY HAMILTON. HOWEVER, SINCE THERE IS NO CLEAR AND UNEQUIVOCAL EVIDENCE THAT HAMILTON EXISTED AND FUNCTIONED ON MARCH 22, 1973, AND, SINCE THERE IS SOME EVIDENCE TO INDICATE THAT McDONALD WAS EMPLOYED BY THE RESPONDENT, WE FIND THAT McDONALD WAS EMPLOYED BY THE RESPONDENT AS A RODMAN ON MARCH 22, 1973.

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12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4683-73-U: RAMO KAHRIC (COMPLAINANT) V. LOCAL 200 OF THE U.A.W. (R JACOBS - STEWARD) (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: RAMO KAHRIC FOR THE COMPLAINANT AND RAY WAKEMAN AND R. JACOBS FOR THE RESPONDENT.

DECISION OF THE BOARD:

DECEMBER 17, 1973.

1. THIS IS A COMPLAINT FILED UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT, WHO IS ALSO THE GRIEVOR, CLAIMS THAT HE HAS BEEN DEALT WITH CONTRARY TO SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED AND IN DUE COURSE SUBMITTED HIS REPORT TO THE BOARD. AFTER CONSIDERING THE REPORT, THE BOARD DIRECTED THAT THE COMPLAINT BE LISTED FOR HEARING TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE COMPLAINT SHOULD BE LISTED FOR A FORMAL HEARING BY THE BOARD TO INQUIRE INTO ITS MERITS.

2. AT THE COMMENCEMENT OF THE HEARING IT BECAME APPARENT THAT THE COMPLAINANT'S ENGLISH LEFT MUCH TO BE DESIRED AND, ACCORDINGLY, ALL THE PROCEEDINGS WERE TRANSLATED FOR HIS BENEFIT INTO THE SERBIAN-CROATIAN LANGUAGE.

3. THE COMPLAINANT HAD BEEN IN THE EMPLOY OF THE FORD MOTOR COMPANY OF CANADA IN WINDSOR UP UNTIL JUNE, 1972. HIS TERMS AND CONDITIONS OF WORK WERE GOVERNED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION, HEREINAFTER REFERRED TO AS "LOCAL 200", AND HIS EMPLOYER. HE WAS DISCHARGED ON JUNE 21ST, FOLLOWING AN ARGUMENT WITH HIS FOREMAN. THE COMPLAINANT ADMITS THAT DURING THE COURSE OF THE ARGUMENT HE SAID TO THE FOREMAN THAT IF HE DIDN'T LEAVE THE COMPLAINANT ALONE HE WOULD KILL HIM. THE COMPLAINANT MAINTAINS THAT THIS WAS MERELY A THREAT MADE IN THE HEAT OF ARGUMENT AND HE DIDN'T INTEND TO CARRY IT OUT. THE RESPONDENT, R. JACOBS, A UNION STEWARD, WAS PRESENT DURING THE ARGUMENT WITH THE FOREMAN AND AT THE TIME OF THE COMPLAINANT'S DISCHARGE. FOLLOWING HIS DISCHARGE, THE COMPLAINANT FILED A GRIEVANCE WITH LOCAL 200 ON THE GROUND THAT THE PENALTY WAS TOO SEVERE. THE COMPLAINANT REQUESTED REINSTATEMENT WITH FULL BACK PAY. THE GRIEVANCE WAS PROCESSED BY LOCAL 200 AND ON JULY 24TH THE EMPLOYER DENIED THE GRIEVANCE. LOCAL 200 THEN OBTAINED AN AUTHORIZATION FROM THE COMPLAINANT TO APPEAL THIS DENIAL OF THE GRIEVANCE TO THE IMPARTIAL UMPIRE PROVIDED FOR UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. LOCAL 200 THEN NOTIFIED THE EMPLOYER THAT IT WAS TAKING THE GRIEVANCE TO THE UMPIRE.

4. DURING THIS PERIOD WHILE THE GRIEVANCE WAS BEING PROCESSED, THE COMPLAINANT KEPT IN TOUCH WITH LOCAL 200 AS TO WHEN HE WAS GOING TO GET HIS JOB BACK. THE COMPLAINANT STATED THAT HE WAS TOLD NOT TO BOTHER THE UNION AND THAT THEY WOULD LET HIM KNOW WHEN THERE WERE ANY RESULTS. IT WAS SUGGESTED TO HIM THAT WHILE THE MATTER WAS BEING

CONSIDERED HE SHOULD MAKE A CLAIM FOR UNEMPLOYMENT INSURANCE. APPARENTLY THE COMPLAINANT HAD SOME DIFFICULTIES IN CONNECTION WITH HIS UNEMPLOYMENT INSURANCE CLAIM. HE ADMITS THAT WHILE AT THE UNEMPLOYMENT INSURANCE COMMISSION OFFICE HE AGAIN THREATENED TO KILL HIS FOREMAN. THE POLICE WERE CALLED. THE COMPLAINANT WAS ARRESTED, SPENT SIX DAYS IN JAIL, AND THEN PLEADED GUILTY TO THE CHARGE OF THREATENING. THE COMPLAINANT WAS PUT ON BOND TO KEEP THE PEACE FOR ONE YEAR. ALTHOUGH THE COMPLAINANT WAS REPRESENTED BY A LAWYER AT THE HEARING ON THE CHARGE OF THREATENING, HE NOW MAINTAINS THAT HE DID NOT UNDERSTAND WHAT THE GUILTY PLEA MEANT.

5. WHEN LOCAL 200 LEARNED OF THE CONVICTION, THE LOCAL UNION NEGOTIATING COMMITTEE THEN REVIEWED THE GRIEVANCE CASE, CAME TO THE CONCLUSION THAT THE GRIEVANCE COULD NOT SUCCEED IN FRONT OF AN UMPIRE, AND THEREFORE WITHDREW THE GRIEVANCE FROM THE UMPIRE'S AGENDA. THE COMPLAINANT WAS SO NOTIFIED BY LETTER DATED SEPTEMBER 7TH, WHICH LETTER, HOWEVER, APPARENTLY NEVER REACHED HIM BECAUSE HE HAD IN THE MEANTIME BEEN FORCED TO CHANGE HIS RESIDENCE AND HAD NOT NOTIFIED LOCAL 200 OF THIS FACT. IN DUE COURSE, THIS COMPLAINT WAS FILED, ALLEGING THAT LOCAL 200 HAD FAILED TO FAIRLY REPRESENT HIM IN THE MATTER OF THE GRIEVANCE, CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT, WHICH PROVIDES AS FOLLOWS:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

6. ALTHOUGH NOT SPECIFICALLY REFERRED TO IN THE COMPLAINT, IT WAS APPARENT, BOTH FROM THE FIELD OFFICER'S REPORT AND IN THE COMPLAINANT'S STATEMENTS TO THE BOARD AT THE HEARING, THAT THE COMPLAINANT IS PRIMARILY CONCERNED WITH GETTING HIS JOB BACK. HE FEELS THAT HE HAS NOT DONE ANYTHING WRONG AND THAT HE HAS BEEN DEALT WITH UNJUSTLY. AT THE HEARING THE BOARD MADE EVERY EFFORT TO EXPLAIN TO THE COMPLAINANT THAT IT DID NOT HAVE THE POWER OR JURISDICTION IN THIS PROCEEDING TO ORDER THE EMPLOYER TO REINSTATE THE COMPLAINANT IN HIS JOB. IT WAS POINTED OUT TO HIM THAT THIS COMPLAINT RELATED TO AN ALLEGED FAILURE ON THE PART OF LOCAL 200 TO COMPLY WITH ITS DUTIES AND RESPONSIBILITIES UNDER SECTION 60 OF THE ACT. IT BECAME APPARENT DURING THE HEARING THAT THE COMPLAINANT DID NOT UNDERSTAND WHAT WAS INVOLVED IN THE GRIEVANCE PROCESS UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND DID NOT UNDERSTAND WHAT LOCAL 200 HAD BEEN DOING ON HIS BEHALF IN PROCESSING THE GRIEVANCE THROUGH TO THE FINAL STAGE OF THE PROCESS. HE CLEARLY DID NOT UNDERSTAND THAT THE PROCESS INEVITABLY TAKES A CERTAIN AMOUNT OF TIME AND CAME TO THE CONCLUSION THAT THE UNION WAS IN FACT NOT DOING ANYTHING FOR HIM. ONCE AGAIN, AN ATTEMPT WAS MADE BY THE BOARD TO EXPLAIN TO THE COMPLAINANT WHAT HIS POSITION WAS VIS-A-VIS THE COLLECTIVE AGREEMENT, AND IN PARTICULAR, HOW THE GRIEVANCE PROCESS WORKS

AND WHAT THE UNION HAD DONE IN CONNECTION WITH HIS GRIEVANCE. FURTHER, IT WAS EXPLAINED TO THE COMPLAINANT WHY LOCAL 200 HAD DECIDED NOT TO PURSUE THE GRIEVANCE BEFORE THE IMPARTIAL UMPIRE.

7. THE COMPLAINANT WAS THEN GIVEN AN OPPORTUNITY TO MAKE HIS REPRESENTATIONS TO THE BOARD WITH RESPECT TO HOW, IN HIS VIEW, THE UNION ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH, OR AS WAS PUT TO HIM, HOW THE UNION ACTED UNFAIRLY AGAINST HIM. IN ESSENCE, THE COMPLAINANT'S REPLY WAS THAT HE FELT THAT HE WAS IN THE RIGHT AND DID NOT ENGAGE IN ANY CRIMINAL ACTIVITY, THAT HE DOES NOT FEEL ANY GUILT AND THAT HE LOST HIS JOB FOR NOTHING. HE WENT ON TO RELATE THAT, AS A RESULT OF LOSING HIS JOB, HE HAS SINCE BEEN EJECTED FROM HIS HOME AND HIS WIFE HAS LEFT HIM. HE MAINTAINS HE IS UNABLE TO GET ANOTHER JOB WITH OTHER AUTOMOBILE EMPLOYERS. HE BELIEVED THAT THE UNION COULD HAVE REPRESENTED HIM BETTER AND HE REFERRED TO ANOTHER INSTANCE WHERE A PERSON WHO WAS DISCHARGED FOR FIGHTING WAS SUBSEQUENTLY REINSTATED DUE TO THE EFFORTS OF LOCAL 200. IT WAS NOT SUGGESTED THAT IN THIS LATTER INSTANCE THERE WAS ANY REPETITION OF THE CONDUCT WHICH RESULTED IN THE INITIAL DISCHARGE.

8. THE BOARD HAS POINTED OUT IN A NUMBER OF CASES THAT THE DUTY IMPOSED BY SECTION 60 ON A TRADE UNION DOES NOT CARRY THE OBLIGATION OF PROCESSING EVERY GRIEVANCE THROUGH TO THE FINAL STAGE OF THE PROCESS, IN THIS CASE, ARBITRATION BY AN IMPARTIAL UMPIRE. IN DECIDING WHETHER TO PROCESS A GRIEVANCE OR TO CARRY IT THROUGH TO ARBITRATION, THE SECTION REQUIRES THAT THE TRADE UNION NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY, OR IN BAD FAITH. IN THE PRESENT CASE, LOCAL 200 DID IN FACT INITIATE THE FINAL STAGE OF THE PROCESS AND HAD THE GRIEVANCE PLACED ON THE UMPIRE'S AGENDA. IT WAS ONLY AFTER THE INCIDENT IN THE UNEMPLOYMENT INSURANCE OFFICE, RESULTING IN THE CONVICTION OF THE COMPLAINANT, THAT THE LOCAL UNION NEGOTIATING COMMITTEE CAME TO THE CONCLUSION THAT THE UNION COULD NOT SUCCEED IN THE CASE BEFORE THE UMPIRE. THERE IS NOTHING IN THE MATERIALS BEFORE US WHICH WOULD SUGGEST THAT THIS DECISION WAS ARRIVED AT IN AN ARBITRARY FASHION OR THAT IN REACHING ITS DECISION LOCAL 200 ACTED IN A DISCRIMINATORY MANNER TOWARDS THE COMPLAINANT. NOR IS THERE ANYTHING TO SUGGEST BAD FAITH ON THE PART OF LOCAL 200. WHILE THIS BOARD HAS CONSIDERABLE SYMPATHY FOR THE PLIGHT IN WHICH THIS UNFORTUNATE MAN NOW FINDS HIMSELF, WE ARE UNABLE TO FIND ON THE BASIS OF THE EVIDENCE AND REPRESENTATIONS BEFORE US THAT THE RESPONDENT TRADE UNION ACTED IN A MANNER CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT IN ITS REPRESENTATION OF THE COMPLAINANT.

9. HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE COMPLAINT IS DISMISSED.

4619-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HASHMAN CONSTRUCTION - DIVISION OF TRISTAR WESTERN LTD. (RESPONDENT) v. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (INTERVENER).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MacLEAN, W. STEFANOVICH AND W. SHERMAN FOR THE APPLICANT; R. P. ARMSTRONG, J. H. SERR, S. C. TESSIS AND R. L. EVANS FOR THE RESPONDENT; A. M. MINSKY, J. BERKOW AND J. McCUTCHEON FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 17, 1973.

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3. THE BOARD AT THE OUTSET OF THE PROCEEDINGS INDICATED TO THE PARTIES IN THE USUAL MANNER THAT THE APPLICANT HEREIN IN ACCORDANCE WITH THE REGISTRAR'S CERTIFICATE HAD PREVIOUSLY BEEN FOUND TO BE A TRADE UNION WITHIN THE MEANING OF S1(1)(N) OF THE ACT.

4. AT THIS POINT THE INTERVENER INDICATED THAT IT INTENDED TO CHALLENGE THE STATUS OF THE APPLICANT AS "AN ORGANIZATION OF EMPLOYEES" FOR PURPOSES OF S1(1)(N) ARGUING INTER ALIA THAT THE MATTER WAS OF "A JURISDICTIONAL" NATURE GOING TO THE VERY ROOT OF THE APPLICANT'S CAPACITY TO MAKE THIS APPLICATION FOR CERTIFICATION.

5. THE BOARD INDICATED TO COUNSEL FOR THE INTERVENER THAT IN LIGHT OF THE REGISTRAR'S CERTIFICATE OF STATUS AND HAVING REGARD TO S94 OF THE O.L.R.A. IT WOULD BE INCUMBENT UPON THE INTERVENER TO ADDUCE EVIDENCE REBUTTING THE STATUTORY PRESUMPTION CREATED PURSUANT TO THE ACT. (SEE; THE ZELLER'S LIMITED CASE OLRB M.R. NOVEMBER 1970 809; THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON CASE OLRB M.R. OCTOBER 1972 846).

6. COUNSEL FOR THE APPLICANT THEN SUBMITTED, IN EFFECT, THAT THE VERY PURPOSE OF THE HEARING WAS TO DETERMINE THE INTERVENER'S STATUS TO APPEAR AS A PARTY TO THESE PROCEEDINGS. IT THEREFORE FOLLOWED THAT BEFORE THE BOARD SHOULD PERMIT THE INTERVENER TO LEAD EVIDENCE IN SUPPORT OF ITS REPRESENTATIONS WITH RESPECT TO THE APPLICANT'S STATUS THE INTERVENER SHOULD BE PUT TO THE REQUIREMENT OF JUSTIFYING ITS PRESENCE AT THE HEARING.

7. THE RESPONDENT INDICATED IN A MOST PRUDENT FASHION THAT IT WOULD BE HIGHLY DESIRABLE FOR BOTH TRADE UNION PARTIES TO JUSTIFY THEIR STATUS RESPECTIVELY AND IT WAS IN THE BOARD'S HANDS WITH REGARD TO THE PROCEDURAL ORDER IN WHICH THIS WAS TO BE BROUGHT ABOUT.

8. A TRADE UNION IN ORDER TO BE GRANTED LEAVE TO PARTICIPATE IN A BOARD PROCEEDING MUST DEMONSTRATE THAT IT WILL BE AFFECTED BY THE OUTCOME OF A BOARD DETERMINATION ON ANY MATTER IN ISSUE BEFORE IT. IT HAS BEEN THE USUAL PRACTICE OF THE BOARD TO REQUIRE A TRADE UNION WISHING TO INTERVENE IN A PROCEEDING TO DEMONSTRATE AN INTEREST THEREIN BY FILING EITHER A COLLECTIVE AGREEMENT OR SOME OTHER EVIDENCE OF REPRESENTATION INDICATING THAT EMPLOYEES WHOM IT REPRESENTS WILL BE PREJUDICED

SHOULD THE BOARD PROCEED IN ITS ABSENCE. (SEE; ESSEX HEALTH ASSOCIATION CASE OLRB M.R. FEBRUARY 1967 885). FURTHERMORE, IN MATTERS INVOLVING CERTIFICATION PROCEEDINGS UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THE BOARD FURTHER REQUIRES THAT THE EVIDENCE FILED IN SUPPORT OF ITS INTERVENTION BE DETERMINABLE AS OF THE DATE OF THE APPLICANT'S APPLICATION FOR CERTIFICATION. (SEE; SPRING PLASTERING LIMITED CASE OLRB M.R. SEPTEMBER 1967 887 AT P. 888; PERF CONSTRUCTION INDUSTRY OLRB M.R. FEBRUARY 1972 124). FAILURE BY A TRADE UNION TO SATISFY THE BOARD OF AN INTEREST IN THE PROCEEDINGS AS AFORESAID WILL CAUSE THE BOARD TO RULE THAT ORGANIZATION A STRANGER TO THE PROCEEDINGS. (SEE; MANNIX Co. LTD. CASE OLRB M.R. JANUARY 1965 526).

9. THE BOARD THEREFORE DETERMINED THAT THE INTERVENER BE PUT TO THE REQUIREMENT OF JUSTIFYING ITS STATUS IN THESE PROCEEDINGS IN ACCORDANCE WITH ITS PRACTICE.

10. COUNSEL FOR THE INTERVENER, HAVING REGARD TO THE BOARD'S DECISION, INDICATED (UPON HIS CLIENT'S INSTRUCTIONS) THAT HE INTENDED TO WITHDRAW FROM THE PROCEEDINGS. THE BOARD INDICATED THAT IF THE INTERVENER CHOSE TO WITHDRAW FROM THE PROCEEDINGS IT DID SO AT ITS OWN PERIL FOR THE BOARD INTENDED TO PROCEED IN THE INTERVENERS' ABSENCE. (SEE NICK MASNEY HOTELS LIMITED CASE OLRB M.R. NOVEMBER 1968 833).

11. AT THIS JUNCTURE COUNSEL FOR THE INTERVENER WITHDREW FROM THE HEARING ROOM.

12. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

13. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

14. THE RESPONDENT THEN RAISED TWO MATTERS DEALING WITH THE PROPRIETY OF THE APPLICANTS' APPLICATION FOR CERTIFICATION. IN THE FIRST INSTANCE, IT WAS SUBMITTED THAT A COLLECTIVE AGREEMENT DATED NOVEMBER 1, 1973 BETWEEN THE RESPONDENT COMPANY AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (HEREINAFTER REFERRED TO AS "LOCAL 1669") COVERING A UNIT OF ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE GEOGRAPHIC AREA AFFECTED BY THIS APPLICATION CONSTITUTED A BAR. AND IN THE SECOND INSTANCE, IT WAS SUBMITTED THAT MR. WILLIAM G. SHERMAN WHOSE NAME APPEARS ON THE RELEVANT DOCUMENTS FILED IN SUPPORT OF THE APPLICATION WAS WITHOUT AUTHORITY TO REPRESENT THE APPLICANT HEREIN AND THEREFORE THE APPLICATION SHOULD BE TREATED AS A NULLITY.

15. THE APPLICANT AGREED THAT A COLLECTIVE AGREEMENT HAD IN FACT BEEN ENTERED INTO FOR THE UNIT OF EMPLOYEES CITED THEREIN BETWEEN THE RESPONDENT AND LOCAL 1669. IN CONSEQUENCE THEREOF, THE APPLICANT REQUESTED THE BOARD TO GRANT LEAVE TO AMEND THE UNIT PROPOSED IN ITS

ORIGINAL APPLICATION TO READ "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE EMPLOYER...ETC." THAT IS TO SAY, THE APPLICANT REQUESTED THE BOARD TO DROP "CARPENTERS AND CARPENTERS APPRENTICES" FROM THE PROPOSED UNIT.

16. COUNSEL FOR THE RESPONDENT PROPOSED TWO GROUNDS FOR OPPOSING THE APPLICATION FOR LEAVE TO AMEND. FIRSTLY, IT WAS ARGUED THAT IT WAS CONTRARY TO THE BOARD'S PRACTICE TO GRANT LEAVE IN THESE CIRCUMSTANCES HAVING REGARD TO THE PRINCIPLES CITED IN THE GWELL INVESTMENTS LIMITED CASE OLRB M.R. OCTOBER 1971 675 AT P. 676. AND FURTHERMORE, IT WAS SUGGESTED THAT CONSTRUCTION LABOURERS (WHO PRESUMABLY WERE ONLY EXTENDED NOTICE OF THE APPLICATION WITH RESPECT TO THE UNIT PROPOSED IN THE ORIGINAL FORM 49) WOULD BE PREJUDICED BY AN AMENDMENT IN THAT NOTICE OF THE APPLICATION FOR LEAVE TO AMEND WAS DENIED THEM.

17. THE BOARD DETERMINES THAT IT IS NOT CONTRARY TO THE BOARD'S PRACTICE IN APPLICATIONS FOR CERTIFICATION TO GRANT LEAVE TO AMEND A PROPOSED BARGAINING UNIT DURING THE COURSE OF THE PROCEEDINGS. [SEE; THE McDONALD'S RESTAURANTS OF CANADA LTD. CASE OLRB M.R. MAY 1973 287 UPHOLD BY THE DIVISIONAL COURT ON APPLICATION FOR JUDICIAL REVIEW BY ITS DECISION DATED SEPTEMBER 26, 1973 (PER MORAND J.)]. FURTHERMORE THE CASE CITED BY THE RESPONDENT IN SUPPORT OF ITS ARGUMENT IS QUITE DISTINGUISHABLE ON ITS FACTS. IN THAT CASE THE BOARD REFUSED TO GRANT LEAVE TO AMEND BECAUSE OF A BLATANT ATTEMPT TO ABUSE THE BOARD'S PROCEDURES. IN THE CIRCUMSTANCES BEFORE THE BOARD THE APPLICANT IN LIGHT OF THE COLLECTIVE AGREEMENT RAISED AS A BAR TO THIS APPLICATION REQUESTS LEAVE TO AMEND THE BARGAINING UNIT IN ORDER TO CONFINE THE UNIT TO THOSE EMPLOYEES IN THE ORIGINAL PROPOSED UNIT IN THE EMPLOY OF THE EMPLOYER AS OF THE DATE OF THE APPLICATION WHO REMAIN UNREPRESENTED FOR PURPOSES OF COLLECTIVE BARGAINING. THIS BOARD CAN PERCEIVE NO MORE LEGITIMATE REASON FOR GRANTING SUCH AN AMENDMENT PROVIDED THAT IT DOES NOT OPERATE TO THE PREJUDICE OF ANY PERSON HERETOFORE DENIED NOTICE OF THE PROCEEDINGS. AND IN THIS REGARD, THIS BOARD IS SATISFIED THAT NO INTERESTED PERSON WILL BE COMPROMISED BY THE PROPOSED AMENDMENT. AT ALL MATERIAL TIMES ALL EMPLOYEES AFFECTED BY THIS APPLICATION WERE GIVEN NOTICE OF THE PROCEEDINGS.

18. THE BOARD THEREFORE FINDS THAT THE SERIES OF DOCUMENTS FILED HEREIN CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF S1(1)(E) OF THE ACT AND TERMINATES THE PROCEEDINGS INSOFAR AS IT AFFECTS "CARPENTERS AND CARPENTERS APPRENTICES".

19. THE BOARD FURTHER GRANTS THE APPLICANT LEAVE TO AMEND THE PROPOSED BARGAINING UNIT TO READ AS SET OUT IN PARAGRAPH 15 HEREIN.

20. IN DEALING WITH THE RESPONDENT'S SUBMISSIONS WITH RESPECT TO THE CAPACITY OF MR. SHERMAN TO REPRESENT THE APPLICANT WHILE EMPLOYED BY LOCAL 1669, THIS BOARD FINDS THAT THERE IS NOTHING BEFORE IT TO BRING INTO QUESTION MR. SHERMAN'S AUTHORITY. THE BOARD CONCEDES THAT THE INTERNAL UNION ARRANGEMENT WITH RESPECT TO MR. SHERMAN'S DUAL

CAPACITY IS ILL DEFINED AND LACKING IN BUSINESS PRECISION, NEVERTHELESS THIS BOARD IS SATISFIED HAVING REGARD TO THE DIRECT EVIDENCE OF MR. SHERMAN HIMSELF, THAT HE IS A PROPERLY QUALIFIED REPRESENTATIVE OF THE APPLICANT FOR PURPOSES OF THE INSTANT APPLICATION.

21. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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23. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4227-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SENTINEAL TRANSPORTATION SYSTEMS LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: I.J. THOMSON AND R. ARNOLD FOR THE APPLICANT; ROBERT G. SENTINEAL FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 12, 1973.

1. IN THIS CASE THE RESPONDENT OBJECTED TO THE BOARD'S JURISDICTION ON THE BASIS THAT FORTY PER CENT OF ITS BUSINESS RESULTED FROM A CONTRACT WITH THE CANADIAN GOVERNMENT TO HAUL MAIL. THE RESPONDENT HAS AN OFFICE AT HAMILTON WHERE IT KEEPS ITS TRUCKS; IT IS ALSO ENGAGED IN THE GENERAL TRANSPORTATION BUSINESS. ITS DRIVERS REPORT TO HAMILTON AND THERE IS A REGULAR MAIL ROUTE IN THE NIAGARA PENINSULA WITH STOPS AT ST. CATHARINES, NIAGARA FALLS, FORT ERIE AND THEN TO BUFFALO IN THE U.S.A.

2. WHAT IS OF PRIMARY CONCERN IS THAT THE RESPONDENT COMPANY REGULARLY CARRIES ON BUSINESS OUTSIDE THE PROVINCE INTO THE UNITED STATES AND IN THOSE CIRCUMSTANCES WE ARE OF THE OPINION THAT THE BUSINESS OF THE RESPONDENT DOES NOT FALL WITHIN THE LEGISLATIVE AUTHORITY OF THE PROVINCE. OUR DECISION IS BASED ON THE PRINCIPLES SET FORTH IN REIMER EXPRESS LINES LIMITED (1969) OLRB MTHLY REP. 58. IN THAT CASE THIS BOARD RELIED ON A DECISION OF THE SUPREME COURT OF ONTARIO IN THE TANK TRUCK TRANSPORT LTD. CASE 61 CLLC 184, 1960 OR 497 (1960) 25 D.L.R. (2D) 161. IN THE TANK TRUCK TRANSPORT LTD. CASE, SUPRA, MCLENNAN J.A. SAID AS FOLLOWS:

"I AGREE WITH COUNSEL FOR THE RESPONDENT
THAT NOT EVERY UNDERTAKING CAPABLE OF

CONNECTING PROVINCES OR CAPABLE OF EXTENDING BEYOND THE LIMITS OF A PROVINCE DOES SO IN FACT. THE WORDS "CONNECTING" AND "EXTENDING" IN S. 92(10)(A) MUST BE GIVEN SOME SIGNIFICANCE. FOR EXAMPLE A TRUCKING COMPANY OR A TAXICAB COMPANY TAKING GOODS OR PASSENGERS OCCASIONALLY AND AT IRREGULAR INTERVALS FROM ONE PROVINCE TO ANOTHER COULD HARDLY BE SAID TO BE AN UNDERTAKING FALLING WITHIN S. 92(10)(A). AS APPEARS FROM THE WINNER CASE AND THE UNDERWATER GAS DEVELOPERS CASE "UNDERTAKING" INVOLVES ACTIVITY AND I THINK THAT TO CONNECT OR EXTEND, THAT ACTIVITY MUST BE CONTINUOUS AND REGULAR, BUT IF THE FACTS SHOW THAT A PARTICULAR UNDERTAKING IS CONTINUOUS AND REGULAR, AS THE UNDERTAKING IS IN THIS CASE, THEN IT DOES IN FACT CONNECT OR EXTEND AND FALLS WITHIN THE EXCEPTION IN S. 10(A) REGARDLESS OF WHETHER IT IS OF GREATER OR LESS IN EXTENT THAN THAT WHICH IS CARRIED ON WITHIN THE PROVINCE."

4. ACCORDINGLY, SINCE THE BUSINESS OF THE RESPONDENT IS CONTINUOUSLY AND REGULARLY BEYOND THE PROVINCE INTO THE UNITED STATES WE DETERMINE THAT THIS BOARD DOES NOT HAVE JURISDICTION AND THE APPLICATION IS DISMISSED ON THAT GROUND ALONE.

5. DURING ARGUMENT WE REFERRED THE PARTIES TO THE DECISIONS WITH RESPECT TO INDEPENDENT CONTRACTORS CARRYING ON BUSINESS ON BEHALF OF THE CANADIAN POST OFFICE; SEE JESSIMAN BROS. CARTAGE V. LETTER CARRIERS UNION 71 CLLC ¶14,111; THE LETTER CARRIERS' UNION OF CANADA V. CANADIAN UNION OF POSTAL WORKERS AND M & B ENTERPRISES LTD. 73 CLLC ¶14,160. THE M & B ENTERPRISES LTD. CASE, SUPRA, WAS APPEALED TO THE SUPREME COURT OF CANADA AND SINCE ARGUMENT AND PRIOR TO THIS DECISION, THE DECISION OF THE SUPREME COURT OF CANADA WAS HANDED DOWN; 73 CLLC #14,190. THAT CASE CONCERNED THE OPERATION OF A COMPANY WHICH WAS PERFORMING WORK FOR THE POST OFFICE. THERE WAS A HIGH DEGREE OF INTEGRATION AND CONTROL OF THE EMPLOYEES BY THE POSTAL SERVICES. THE SUPREME COURT OF CANADA DETERMINED THAT THE PROVINCIAL LABOUR RELATIONS BOARD DID NOT HAVE JURISDICTION. IN ITS DECISION THAT COURT STATED AT P. 14,876:

"AS 90% OF THE ACTIVITIES OF M & B ENTERPRISES LTD. WAS CONFINED TO WORK FOR THE POST OFFICE, IT IS OBVIOUS THAT THIS WORK COMPOSED THE MAIN AND PRINCIPAL PART OF ITS BUSINESS AND THE LABOUR RELATIONS BOARD OF SASKATCHEWAN CANNOT, IN MY OPINION, ACQUIRE JURISDICTION TO ENTERTAIN AN APPLICATION FOR CERTIFICATION OF A BARGAINING REPRESENTATIVE ON BEHALF OF A UNIT COM-

POSED OF ALL TRUCK DRIVER EMPLOYEES OF SUCH A COMPANY OTHER THAN SUPERVISORS, SIMPLY BECAUSE TWO OR THREE DRIVERS IN THE UNIT WERE OCCASIONALLY ENGAGED IN CASUAL EMPLOYMENT DRIVING TRUCKS FOR THE TRANSPORTATION OF FURNITURE FOR OTHERS THAN THE POST OFFICE."

6. WHILE WE HAVE NOTED THE M & B ENTERPRISES LTD. CASE FOR THE PARTIES INFORMATION, IT IS NOT NECESSARY TO OUR DECISION TO DECIDE THIS CASE ON THE BASIS OF THE SUPREME COURT DECISION, OR TO DECIDE THE ISSUE WHETHER THE PROVINCE HAS JURISDICTION WHEN ONLY 40% OF THE BUSINESS IS CONNECTED WITH THE POST OFFICE. THE FIRST GROUND OF OUR DECISION IS SUFFICIENT TO OUST THE JURISDICTION OF THIS BOARD.

7. FOR THESE REASONS THE APPLICATION IS DISMISSED.

4871-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. INDUSTRIAL CONSTRUCTION DIVISION ALLIED STRUCTURAL STEEL COMPANY (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD:

DECEMBER 14, 1973.

1. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, ONTARIO. THE APPLICANT HAS INFORMED THE BOARD THAT THE JOB WHICH FORMS THE SUBJECT MATTER OF THIS APPLICATION IS RECONSTRUCTION AND RENOVATIONS TO THE INTERNATIONAL BRIDGE BETWEEN FORT FRANCES, ONTARIO, AND INTERNATIONAL FALLS, MINNESOTA.

2. THE BOARD NOTES THAT THE APPLICANT HAS CONSENTED TO THE APPLICATION BEING DISPOSED OF WITHOUT A HEARING BY THE BOARD.

3. IN OUR OPINION, THERE IS NO AUTHORITY IN THE BOARD TO ENTERTAIN THIS APPLICATION FOR CERTIFICATION BECAUSE THE SUBJECT MATTER OF THIS APPLICATION IS ONE WHICH LIES WITHIN THE COMPETENCE OF THE GOVERNMENT OF CANADA BY VIRTUE OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT. THE RELATIONS BETWEEN THE RESPONDENT AND THE EMPLOYEES CONCERNED IN THIS APPLICATION ON MATTERS COVERED BY THE LABOUR RELATIONS ACT FALL OUTSIDE THE JURISDICTION OF THE BOARD. REFERENCE IS MADE TO THE ROBERTSON-YATES CORPORATION LIMITED CASE, OLRB M.R. OCTOBER 1962, P. 215.

4. THIS PROCEEDING IS TERMINATED.

4584-73-U; WALTER CLEMENT SARICH (COMPLAINANT) V. ALGOMA STEEL CORPORATION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. J. F. ADE.

DECISION OF THE BOARD:

DECEMBER 14, 1973.

1. THIS IS A REQUEST FOR REVIEW UNDER SECTION 46(2) OF THE BOARD'S RULES OF PROCEDURE.
2. THE ORIGINAL COMPLAINT HEREIN AGAINST THE RESPONDENT, ALGOMA STEEL CORPORATION LIMITED, HEREINAFTER REFERRED TO AS THE COMPANY, WAS DISMISSED ON NOVEMBER 15TH, 1973.
3. PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT WAS DISMISSED WITHOUT A HEARING BECAUSE IT DID NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED.
4. ALONG WITH THE REQUEST FOR REVIEW, THE COMPLAINANT FILED A CONCISE STATEMENT OF THE FACTS AND REASONS UPON WHICH HE RELIES AS REQUIRED BY SUBSECTION 3 OF SECTION 46 OF THE RULES.
5. IN THE MATERIAL FILED, THE COMPLAINANT ALLEGES THAT HE WAS NOT DISMISSED FROM HIS EMPLOYMENT WITH THE RESPONDENT COMPANY FOR "JUST CAUSE". THE COMPLAINANT ALLEGES FURTHER THAT THE COMPANY VIOLATED OTHER TERMS OF THE COLLECTIVE AGREEMENT BETWEEN IT AND THE TRADE UNION REPRESENTING THE COMPLAINANT. WHETHER THIS COLLECTIVE AGREEMENT HAS BEEN CONTRAVENED IS FOR A BOARD OF ARBITRATION TO DECIDE. SECTION 37 OF THE LABOUR RELATIONS ACT PROVIDES FOR THE SETTLEMENT BY ARBITRATION OF ALL DIFFERENCES BETWEEN THE PARTIES TO A COLLECTIVE AGREEMENT ARISING OUT OF ITS INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION. ACCORDINGLY, THIS BOARD HAS NO JURISDICTION TO ENTERTAIN A COMPLAINT CONCERNING THE FOREGOING ALLEGED VIOLATIONS.
6. FROM THE ALLEGED FACTS BEFORE THE BOARD, IT APPEARS THAT THE TRADE UNION ACTING ON BEHALF OF THE COMPLAINANT TOOK THE MATTER OF THIS DISMISSAL TO ARBITRATION. THE COMPLAINANT SEVERELY CRITICIZES THE MANNER IN WHICH THE ARBITRATION HEARING WAS CONDUCTED AND THE RESULTANT AWARD. IN HIS LETTER TO THE BOARD DATED NOVEMBER 22ND, 1973, THE COMPLAINANT REFERS TO R. V. BARBER ET AL, EX PARTE WAREHOUSEMEN & MISCELLANEOUS DRIVERS LOCAL 419 68 DLR (2d) 682. IT IS THE COMPLAINANT'S CONTENTION THAT THE ARBITRATOR ACTED CONTRARY TO THE GUIDELINES SET OUT BY JESSUP, J. A. IN THE ABOVE CITED DECISION. IF THE COMPLAINANT IS CORRECT AND THE BOARD MAKES NO FINDING IN THIS REGARD, THEN HE WOULD BE ABLE TO APPLY TO THE SUPREME COURT OF ONTARIO FOR RELIEF. (THE COMPLAINANT APPLICATION INDICATES THAT THE COMPLAINANT HAS ALREADY APPLIED UNSUCCESSFULLY TO THE SUPREME COURT). AS FAR AS THIS BOARD IS CONCERNED, THE DECISION OF THE ARBITRATOR IS FINAL AND BINDING. SEE SECTION 37 OF THE ACT. THEREFORE, NO APPEAL LIES THEREFROM TO THE BOARD.

7. THE COMPLAINANT MAKES ACCUSATIONS OF CRIMINAL CONDUCT ON THE PART OF THE COMPANY AND ONE OF ITS FORMER FOREMEN. THESE ACCUSATIONS ARE CONTAINED IN A LETTER DATED NOVEMBER 12TH, 1973 AND THE CONCISE STATEMENT FILED THEREWITH. WHETHER THESE ACCUSATIONS ARE WELL-FOUNDED CANNOT BE DETERMINED BY THE BOARD. CONTRAVENTIONS OF THE CRIMINAL CODE OF CANADA MUST BE TRIED IN ANOTHER FORUM.

8. IN PARAGRAPH 5 OF ITS DECISION DATED NOVEMBER 15TH, 1973, THE BOARD DISMISSED THE COMPLAINANT'S COMPLAINT BASED ON SECTION 58(A) OF THE ACT. IN HIS REQUEST FOR REVIEW, THE COMPLAINANT SPECIFICALLY REQUESTS AND THE BOARD REVIEW THIS PART OF ITS PRIOR DECISION. IN PARAGRAPH 5 OF THAT DECISION, THE BOARD FOUND THERE WERE NO FACTS ALLEGED BY THE COMPLAINANT IN REGARD TO SECTION 58(A) UPON WHICH A FINDING OF ANY KIND COULD BE MADE. IN THE NEW MATERIAL FILED WITH THE BOARD, THE COMPLAINANT NOW TAKES THE POSITION THAT HE WAS DISMISSED BY THE COMPANY BECAUSE HE WAS "EXERCISING RIGHTS UNDER THE ACT". THUS, THE COMPLAINANT IS RELYING ON THE LATTER PART OF SECTION 58(A) WHICH STATES THAT "NO EMPLOYER OR PERSON ACTING ON BEHALF OF AN EMPLOYER SHALL REFUSE TO CONTINUE TO EMPLOY A PERSON BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT."

9. IN REGARD TO THE COMPLAINANT'S ALLEGATION THAT HE WAS DISCHARGED FOR EXERCISING RIGHTS UNDER THE ACT, THE BOARD TAKES NOTE OF THE FOLLOWING STATEMENT FOUND IN THE CONCISE STATEMENT FILED BY THE COMPLAINANT:

I WAS DISMISSED UNDER SECTION 14
(FIGHTING) OF THE ALGOMA STEEL
EMPLOYEE CONDUCT RULES.

CLEARLY, THE COMPLAINANT WAS DISMISSED SIMPLY BECAUSE OF FIGHTING, NOT BECAUSE HE WAS EXERCISING RIGHTS UNDER THE ACT.

10. AS WELL AS THE FOREGOING, IT APPEARS FROM THE COMPLAINANT'S CONCISE STATEMENT THAT ANY RIGHTS THAT HE MAY HAVE BEEN EXERCISING ON JULY 17TH, 1969, WERE RIGHTS UNDER THE COLLECTIVE AGREEMENT OR THE EMPLOYMENT STANDARDS ACT. SECTION 58(A) REFERS TO RIGHTS UNDER THE LABOUR RELATIONS ACT. THEREFORE, SECTION 58(A) HAS NO APPLICATION TO THE FACTS AS ALLEGED BY THE COMPLAINANT.

11. LASTLY, THE BOARD MUST CONSIDER THE CASE OF LEONARD R. BOIVEN (COMPLAINANT) AND UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY & NORMAN BEALANDO, BUSINESS MANAGER OF LOCAL 97 (RESPONDENT) [1966] O.L.R.B. OCT. MR. 513 WHICH WAS RAISED BY THE COMPLAINANT IN THE ADDITIONAL MATERIAL FILED WITH THE BOARD ON NOVEMBER 23RD, 1973. THIS CASE WAS REFERRED TO BY THE COMPLAINANT IN ORDER TO SUBSTANTIATE HIS CLAIM THAT A BREACH OF THE COLLECTIVE AGREEMENT CONSTITUTES A VIOLATION OF SECTION 42 OF THE LABOUR RELATIONS ACT. IT IS THE COMPLAINANT'S REASONING THAT A VIOLATION OF SECTION 42 WOULD IN TURN CONSTITUTE A VIOLATION BY THE COMPANY OF SECTION 58(A) OF THE ACT.

12. THE FACTS IN THE BOIVEN CASE CAN BE READILY DISTINGUISHED FROM THE ALLEGED FACTS PRESENTLY BEFORE THE BOARD. IN THE BOIVEN CASE, THE BOARD REASONED:

WHERE A TRADE UNION HAS ITSELF PROCURED THE DISCHARGE OF THE EMPLOYEE, IT WOULD BE UNREASONABLE (TO SAY THE LEAST) TO EXPECT IT THEN TO CARRY THAT CASE THROUGH THE ARBITRATION PROCESS ON THE EMPLOYEE'S BEHALF.

ON THE BASIS OF THE FOREGOING REASONING, THE BOARD THEREFORE DECIDED THAT IT WOULD HEAR A COMPLAINT AGAINST THE TRADE UNION BECAUSE NO OTHER REMEDY WAS REASONABLY AVAILABLE TO THE EMPLOYEE. IN THE INSTANT CASE, THE COMPLAINANT COULD SUBMIT HIS GRIEVANCES AGAINST THE COMPANY TO ARBITRATION. ACCORDING TO THE MATERIAL BEFORE THE BOARD, THE COMPLAINANT DID, IN FACT, GO THROUGH THE ARBITRATION PROCESS. HENCE, THE BOARD WILL NOT NOW HEAR THESE MATTERS AGAIN SIMPLY ON THE GROUND THAT THE COMPLAINANT IS DISSATISFIED WITH THE OUTCOME OF THE ARBITRATION.

13. FOR THE FOREGOING REASONS, THE BOARD IS OF THE OPINION THAT THE COMPLAINANT'S REQUEST FOR REVIEW SHOULD BE DENIED.

14. THE BOARD ACCORDINGLY CONFIRMS ITS PRIOR DECISION IN THIS MATTER DATED NOVEMBER 15TH, 1973 DISMISSING THE COMPLAINT.

4673-73-R: CARLO'S ELECTRIC EMPLOYEES ASSOCIATION (APPLICANT) V. CARLO'S ELECTRIC LIMITED (RESPONDENT).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: S.C. BERNARDO AND JOHN PITTENS FOR THE APPLICANT; JOHN A. HEAD FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 17, 1973.

1. THE APPLICANT IN THIS MATTER HAS NOT PREVIOUSLY BEEN FOUND TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. AT THE HEARING IN THIS MATTER THE APPLICANT PRESENTED EVIDENCE BOTH DOCUMENTARY AND VIVA VOCE CONCERNING THE FORMATION OF THE APPLICANT BY A NUMBER OF THE EMPLOYEES OF THE RESPONDENT COMPANY. ON THE BASIS OF THE EVIDENCE BEFORE IT THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE PRESENT APPLICATION WAS MADE ON FORM 49, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. IT IS, HOWEVER, APPARENT THAT THE APPLICANT IS NOT ENTITLED TO HAVE THE APPLICATION PROCESSED UNDER

SECTION 108 OF THE ACT SINCE THE APPLICANT CANNOT CLAIM TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 106(F) OF THE ACT, "THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY". ACCORDINGLY, THE BOARD PROPOSES TO TREAT THIS APPLICATION AS AN APPLICATION IN FORM 1 MADE UNDER THE GENERAL PROVISIONS OF THE LABOUR RELATIONS ACT.

3. THE BARGAINING UNIT REQUESTED BY THE APPLICANT IS ALL EMPLOYEES OF THE RESPONDENT IN THE BOARD'S REGULAR CONSTRUCTION AREA No. 9. THE BUSINESS OF THE RESPONDENT IS A BUSINESS IN THE CONSTRUCTION INDUSTRY AND THE BOARD DOES NOT NORMALLY ALLOW BARGAINING UNITS FOR APPLICATIONS PERTAINING TO EMPLOYERS IN THE CONSTRUCTION INDUSTRY. THE NORMAL PRACTICE OF THE BOARD IN SUCH CASES IS TO DESCRIBE THE BARGAINING UNIT IN TERMS OF THE TRADES AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, WHICH IN THE PRESENT CASE WOULD BE ELECTRICIANS. ACCORDINGLY, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE ACT THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1349-71-R: LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. (RESPONDENT) v. CANADIAN UNION OF CONSTRUCTION WORKERS (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #2).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND C. MCCLELLAND FOR THE APPLICANT; JAMES B. NOONAN FOR THE RESPONDENT; NO ONE APPEARED FOR INTERVENER #1; A. M. MINSKY, M. J. REILLY AND G. GALLAGHER FOR INTERVENER #2.

DECISION OF THE BOARD: DECEMBER 17, 1973.

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5. THE BOARD HAS CONSIDERED THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES. THE BOARD FINDS THAT THE GROUP OF EMPLOYEES FOR WHICH INTERVENER #2 IS SEEKING CERTIFICATION DO NOT EXERCISE A COMBINATION OF TECHNICAL SKILLS OR ARE NOT REQUIRED TO PERFORM THE SKILLS IN WHOLE OR IN PART OF MORE THAN ONE CRAFT AS PART OF A WORK CREW OR TEAM WITHIN THE MEANING OF SECTION 6(2) OF THE LABOUR RELATIONS ACT.

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15. THE MATTER IS REFERRED TO THE REGISTRAR.

ADDITIONAL REASONS OF BOARD MEMBER E. BOYER: DECEMBER 17, 1973.

1. WHILE I HAVE SOME STRONG REVERSATIONS WITH THE DECISION, HAVING REGARD TO THE SPECIAL CIRCUMSTANCES AND AGREEMENT OF THE PARTIES, I AGREE WITH THE DECISION IN THIS MATTER.
2. I DESIRE, HOWEVER, TO RECORD MY OBSERVATION ON THE CONDUCT OF INTERVENER #2. AT THE PRESENT TIME INTERVENER #2 IN EFFECT ENJOYS THE STATUS OF A CRAFT TRADE UNION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT IN THAT IT HAS BEEN GRANTED CONSISTENTLY A UNIT OF CONSTRUCTION LABOURERS. IN SEEKING TO OBTAIN BARGAINING RIGHTS FOR UNITS OF ALL EMPLOYEES, INTERVENER #2 RUNS THE RISK OF FORFEITING THIS SPECIAL STATUS.
3. IT IS POSSIBLE THAT FUTURE APPLICATIONS MADE BY INTERVENER #2 MAY RESULT IN THE APPROPRIATE BARGAINING UNIT BEING DETERMINED UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT (NAMELY, ALL CRAFTS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION).
4. IN THESE CIRCUMSTANCES, INTERVENER #2 WILL BE REQUIRED TO HAVE A MAJORITY OF SUCH PERSONS IN THIS BARGAINING UNIT. THIS MAY RESULT IN SERIOUS CONSEQUENCES FOR INTERVENER #2 IN THE METROPOLITAN TORONTO AREA WITH EMPLOYERS, ACCREDITED EMPLOYERS' ASSOCIATIONS AND OTHER TRADE UNIONS.

4791-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PLUMMER MEMORIAL PUBLIC HOSPITAL (SAULT ALGOMA AMBULANCE SERVICE) (RESPONDENT) v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT; T. R. YUKICH AND L. BURFOOT FOR THE RESPONDENT; B. A. DUNN AND A. G. HEARN FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 28, 1973.

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2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES CLASSIFIED BY THE RESPONDENT AS CASUALTY CARE ATTENDANTS AND DISPATCHERS. THESE PARTICULAR EMPLOYEES WERE HIRED BY THE RESPONDENT ON NOVEMBER 7, 1973, AT WHICH TIME AMBULANCE SERVICES WERE TAKEN OVER BY THE RESPONDENT FROM THE EMERGENCY HEALTH SERVICE.

4. THE RESPONDENT IS PARTY TO A COLLECTIVE AGREEMENT DATED MARCH 17, 1971 WITH THE INTERVENER. THE RECOGNITION CLAUSE OF THIS AGREEMENT PROVIDES FOR AN "ALL LAY EMPLOYEE" BARGAINING UNIT AND THERE ARE NO SPECIFIC EXCLUSIONS COVERING THE EMPLOYEES SUBJECT TO THIS APPLICATION. IT IS THE POSITION OF BOTH THE RESPONDENT AND THE INTERVENER THAT THESE EMPLOYEES CONSTITUTE AN ACCRETION TO THIS BARGAINING UNIT. THE APPLICANT, ON THE OTHER HAND, MAINTAINS THAT THESE AMBULANCE PERSONNEL COMPRISE AN APPROPRIATE TAG-END UNIT IN THEMSELVES.

5. HAVING REVIEWED ALL OF THE CIRCUMSTANCES OF THIS CASE AND TAKING INTO ACCOUNT THE PRINCIPLES AS SET OUT IN THE RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON CASE [1971] OLRB REP. 461, THE AJAX AND PICKERING GENERAL HOSPITAL CASE [1972] OLRB REP. 477 AND THE PARRY SOUND DISTRICT GENERAL HOSPITAL CASE (BOARD FILE NO. 2626-73-R), WE FIND THAT THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. THE APPLICATION IS THEREFORE DISMISSED.

4516-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(COMPLAINANT) v. TRILLIUM RECREATIONAL VEHICLES LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. RUSSELL AND G. STEVENS FOR THE COMPLAINANT; J. C. MURRAY AND R. J. DAMM FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 28, 1973.

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2. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS GEORGE SIMOS, JOHN ATSALOS AND ELIAS MIARITIS HAVE BEEN DEALT WITH CONTRARY TO SECTIONS 56 AND 58 OF THE SAID ACT.

3. AT THE INITIAL HEARING OF THIS MATTER ON DECEMBER 4, 1973, THE COMPLAINANT INDICATED THAT IT WOULD NOT BE PROCEEDING WITH THE COMPLAINT INSOFAR AS IT RELATED TO ELIAS MIARITIS AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

4. THE EVIDENCE DISCLOSES THAT AN APPLICATION FOR CERTIFICATION HAD BEEN FILED ON SEPTEMBER 14, 1973 AND THAT THE NOTICE TO EMPLOYEES IN THIS REGARD WAS POSTED UPON THE PREMISES OF THE RESPONDENT ON FRIDAY, SEPTEMBER 21, 1973 (SEE BOARD FILE NO. 4399-73-R). ALTHOUGH THE REPRESENTATIVE FOR THE COMPLAINANT DREW TO OUR ATTENTION THE EXISTENCE OF A

PETITION DATED SEPTEMBER 24, 1973, AS FILED IN THESE PROCEEDINGS AND REQUESTED US TO DRAW CERTAIN CONCLUSIONS UPON EXAMINING THE SPECIFIC WORDING AS CONTAINED THEREIN, NO EVIDENCE WAS ADDUCED CONCERNING THE ORIGINAL ALLEGATION THAT THE AGGRIEVED PERSONS WERE DISMISSED BECAUSE OF THEIR REFUSAL TO SIGN THIS DOCUMENT ON SEPTEMBER 25, 1973. INSTEAD, IT WOULD APPEAR THAT THE COMPLAINANT, IN RELATION TO SIMOS IS PRIMARILY RELYING UPON THE FACT THAT HE ACTED AS COLLECTOR FOR APPROXIMATELY HALF OF THE MEMBERSHIP CARDS TENDERED IN THIS APPLICATION AND THAT HE WAS ELECTED AT A UNION MEETING HELD ON SEPTEMBER 26, 1973, TO ATTEND BEFORE THE BOARD IN THOSE SUBSEQUENT PROCEEDINGS. AS REGARDS ATSALOS, WE ARE ASKED TO DRAW CERTAIN INFERENCES AS A RESULT OF HIS BEING QUESTIONED BY MR. BOHLMANN, A PARTNER IN THE RESPONDENT'S OPERATION, CONCERNING HIS FEELINGS ABOUT A UNION ON THE AFTERNOON OF THE DAY THAT THE GREEN NOTICE HAD BEEN POSTED.

5. WHILE THE COMPLAINANT TAKES THE POSITION THAT BOTH OF THESE AGGRIEVED PERSONS WHO WERE EXCELLENT WORKERS IN THEIR CAPACITY AS "LEAD HANDS", WERE DISCHARGED ON SEPTEMBER 27, 1973, BECAUSE OF THEIR AFFILIATION WITH THE UNION, IT IS THE RESPONDENT'S CONTENTION THAT THEY HAD RESIGNED AT THIS TIME DURING THE COURSE OF A CONVERSATION WITH KURT SCHMID, ANOTHER PARTNER IN THE RESPONDENT. IN THE ALTERNATIVE, THE RESPONDENT ASSERTS THAT IF THE BOARD SHOULD FIND THAT THESE PERSONS WERE IN FACT DISCHARGED AT THIS TIME, THEN IT HAD A CREDIBLE REASON TO SUSTAIN ITS ACTIONS IN THIS REGARD ON THE BASIS THAT THEY WERE INVOLVED WITH ELIAS MIARITIS, A FELLOW "LEAD HAND" AND NICK KATZIAMPAS, THEIR FOREMAN, IN A BUSINESS VENTURE DESIGNED TO MANUFACTURE TRAVEL TRAILERS IN DIRECT COMPETITION TO THAT OF THE RESPONDENT'S PRODUCT.

6. AS REGARDS THIS ALTERNATIVE POSITION, IT IS THE SUBMISSION OF THE COMPLAINANT THAT KATZIAMPAS WAS INVOLVED IN THE CONSTRUCTION OF A SINGLE TRAILER FOR HIS OWN PERSONAL USE AND THAT THE AGGRIEVED PERSONS TOGETHER WITH MIARITIS WERE MERELY ASSISTING HIM IN THIS ENDEAVOUR. HOWEVER, NEITHER KATZIAMPAS NOR MIARITIS WERE CALLED BY THE COMPLAINANT TO TESTIFY IN THESE PROCEEDINGS. THE EVIDENCE AS ADDUCED BY THE RESPONDENT IN THIS REGARD IS UNCONTRADICTED AND IS TO THE FOLLOWING EFFECT: SOMETIME IN MAY OF 1973, KATZIAMPAS HAD FIRST MADE A PROPOSAL TO MURRAY HANNA, WHO AT THE TIME WAS ENGAGED AS THE RESPONDENT'S SALES AND PURCHASING AGENT, CONCERNING HIS "HEADING UP" A BUSINESS VENTURE INVOLVING THE MANUFACTURE OF FIBERGLASS TRAVEL TRAILERS DESIGNED SUCH THAT THEY WOULD BE IN DIRECT COMPETITION WITH THE RESPONDENT'S TRAILERS; THAT EARLY IN JUNE SUCH A PROPOSAL WAS FURTHER DISCUSSED AMONGST MESSRS. HANNAH, KATZIAMPAS; MIARITIS AND THE AGGRIEVED PERSONS; THAT A FEW DAYS LATER, KATZIAMPAS HAD ADVISED HANNAH THAT "THEY HAD ALREADY STARTED WORK ON THE MOULDS"; THAT SUCH A PROPOSAL WAS ALSO MADE TO KIETH COLLIER, A FOREMAN WITH THE RESPONDENT, IN EARLY MAY BY KATZIAMPAS WHO INDICATED AT THE TIME THAT HE HAD THREE MORE ASSOCIATES IN THE PROPOSED BUSINESS VENTURE; THAT KATZIAMPAS AFTER INITIALLY AGREEING ON SEPTEMBER 24, 1973, TO PERMIT REINHARD DAMM, PRESIDENT OF THE RESPONDENT, TO VIEW HIS TRAILER SUDDENLY CHANGED HIS MIND AFTER DISCUSSING THE MATTER FURTHER WITH MIARITIS.

HAVING THEREFORE CAREFULLY REVIEWED THE EXTENSIVE EVIDENCE AS ADDUCED IN THIS REGARD, WE ARE SATISFIED THAT AS OF SEPTEMBER 27, 1973, THE RESPONDENT HAD SUBSTANTIAL GROUNDS FOR BELIEVING THAT KATZIAMPAS WAS NOT INVOLVED IN CONSTRUCTING A SELF-PROPELLED AND 'WINABAGO-TYPE' MOTORIZED TRAILER VEHICLE FOR HIS OWN USE AS ALLEGED, BUT RATHER WAS ENGAGED IN THE PROCESS OF SETTING UP A COMPETING TRAILER BUSINESS. FURTHER, THE RESPONDENT'S SUSPICIONS IN THIS REGARD WERE SUBSEQUENTLY CONFIRMED AT LEAST AS FAR AS BOHLMANN WAS CONCERNED, WHEN HE HAD OCCASION TO VIEW THE WORK SITE AND THE CONTENTS WHICH WERE CONTAINED THEREIN WHICH INCLUDED A COMPLETE SET OF MOULDS AND PLUGS, WHICH ACCORDING TO HIM WAS A NECESSARY PRELUDE TO FULL-SCALE PRODUCTION.

7. THE UNCONTRADICTED EVIDENCE OF SCHMID IS TO THE EFFECT THAT IN LATE AUGUST, DAMM HAD SHOWN HIM AN ANONYMOUS LETTER ADDRESSED TO THE COMPANY WHICH ALLEGED, INTER ALIA, THAT FOUR PERSONS AND THEIR FOREMAN WERE PLANNING TO LEAVE THE RESPONDENT AT CHRISTMAS TIME TO GO INTO BUSINESS FOR THEMSELVES. HE STATED THAT UPON DISCUSSING THE CONTENTS OF THIS LETTER WITH KATZIAMPAS DURING THE FIRST WEEK IN SEPTEMBER, HE HAD ACCEPTED THE LATTER'S EXPLANATION THAT HE WAS NOT GOING INTO A COMPETING BUSINESS. HOWEVER, FOLLOWING CERTAIN DISCUSSIONS WITH HIS PARTNERS DURING WHICH TIME ADDITIONAL MATTERS WERE BROUGHT TO HIS ATTENTION, SCHMID STATED IT WAS THEN DECIDED THAT HE SHOULD CONFRONT KATZIAMPAS AGAIN IN THIS REGARD. ACCORDINGLY ON SEPTEMBER 27, 1973, KATZIAMPAS WAS SUMMONED INTO HIS OFFICE, WHEREUPON IN SCHMID'S WORDS "I TOLD HIM THAT I UNDERSTAND YOU ARE AFTER ALL IN THE BUSINESS ACTIVITY AND NOT ONLY THAT-IT SEEMS CLOSE TO THE SAME THING WE ARE BUILDING. I WOULD LIKE NOW TO CLEAR THE AIR AND I WANT YOU TO GET YOUR PARTNERS AND WE WILL DISCUSS THIS WHOLE THING OPENLY." SCHMID STATED THAT HE DID NOT REVEAL AT THIS TIME THAT HE IN FACT WAS UNAWARE OF THE IDENTITY OF HIS "PARTNERS". KATZIAMPAS THEN LEFT THE OFFICE AND RETURNED A SHORT TIME LATER IN THE COMPANY OF MIARITIS AND THE TWO AGGRIEVED PERSONS.

8. MUCH OF THE EVIDENCE CONCERNING THE REMARKS MADE BY SCHMID AT THIS POINT TO THESE FOUR EMPLOYEES, IS IN DIRECT CONFLICT. ATSALOS QUOTES SCHMID AS FOLLOWS: "YOU PEOPLE START TO MAKE YOUR OWN BUSINESS. THIS IS OPPOSITE TO THE BUSINESS OF TRILLIUM. YOU HAVE TO RESIGN. OTHERWISE, YOU ARE FIRED. I DON'T WANT TO SEE YOUR FACES ANYMORE." SIMOS'S TESTIMONY IN THIS REGARD, IS ESSENTIALLY TO THE SAME EFFECT. SCHMID, ON THE OTHER HAND, MAINTAINS THAT AFTER ADVISING THESE EMPLOYEES THEY WERE ON A "COLLISION COURSE" WITH THE RESPONDENT AS REGARDS THEIR COMPETING BUSINESS, ONE OF THE EMPLOYEES ASSERTED THAT "THEY WERE BUILDING SOMETHING ELSE". UPON EXPLAINING TO THEM THAT KATZIAMPAS HAD CHANGED HIS MIND CONCERNING HIS OFFER TO PERMIT MR. DAMM TO VIEW THE OBJECT IN QUESTION AFTER DISCUSSING THE MATTER FURTHER WITH MIARITIS, HE THEN STATED THAT HE ASKED THE GROUP "WHAT THEY WERE GOING TO DO ABOUT IT." AT THIS POINT HE STATED THAT THE FOUR PERSONS GOT UP FROM THEIR CHAIRS AS MIARITIS EXCLAIMED - "WE QUIT--THAT'S IT." IT IS CLEAR THAT NEITHER OF THE AGGRIEVED PERSONS TOOK ANY ACTIVE ROLE IN THE CONVERSATION, AND AFTER SHAKING HANDS WITH SCHMID WHO WISHED THEM "GOOD LUCK", ALL FOUR EMPLOYEES PROCEEDED TO LEAVE THE PREMISES.

9. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, AND EVEN IF WE WERE PREPARED TO PREFER THE AGGRIEVED PERSONS' VERSION OF THIS CONVERSATION TO THAT OF SCHMIDS', (AND WE SPECIFICALLY MAKE NO FINDING IN THIS REGARD) AND THUS CONCLUDE THAT IN THE CIRCUMSTANCES THE AGGRIEVED PERSONS HAD BEEN DISCHARGED AS OPPOSED TO HAVING VOLUNTARILY QUIT, WE ARE NEVERTHELESS SATISFIED THAT THE RESPONDENT HAS PROVIDED A CREDIBLE EXPLANATION FOR ITS ACTIONS SURROUNDING THE CESSATION OF THEIR EMPLOYMENT, NAMELY IN ITS BONA FIDE BELIEF THAT THEY WERE ACTIVELY INVOLVED IN THE AFOREMENTIONED COMPETING BUSINESS VENTURE. IN THE RESULT, WE ARE SATISFIED THAT ANY UNION ACTIVITY ON THE PART OF THESE AGGRIEVED PERSONS PLAYED NO ROLE WHATSOEVER IN AFFECTING THE RESPONDENT'S ULTIMATE DECISION IN THIS REGARD.

10. THE BOARD THEREFORE FINDS, THAT ON THE BALANCE OF PROBABILITIES, THE COMPLAINANT HAS FAILED TO ESTABLISH THAT GEORGE SIMOS AND JOHN ATSALOS HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

4320-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. INGLIS LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND F.W. MURRAY.

DECISION OF THE BOARD: DECEMBER 3, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT AT 324 HILTON DRIVE, STONEY CREEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED NOVEMBER 6, 1973, THE BOARD FINDS THAT MRS. HELEN PEARSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY IS INCLUDED IN THE BARGAINING UNIT.

4. DURING THE EXAMINATION INTO THE DUTIES AND RESPONSIBILITIES OF MRS. HELEN PEARSON, SECRETARY TO THE BRANCH MANAGER, THE RESPONDENT COMPANY ASKED: "IS IT ANTICIPATED THAT THERE WILL BE AN INCREASE IN THE NUMBERS OF OFFICE STAFF AND IF YOUR ANSWER IS 'YES' TO WHOM WOULD THEY REPORT?" THE EXAMINER, RULED THAT THE QUESTION COULD NOT BE PUT AS IT WAS NOT WITHIN HIS TERMS OF REFERENCE.

5. COUNSEL FOR THE COMPANY NOW ALLEGES THAT THE ISSUE BUILD UP HAD BEEN PUT IN ISSUE AT THE ORIGINAL HEARING BEFORE THE BOARD AND ACCORDINGLY THE EXAMINER SHOULD HAVE ALLOWED THE QUESTION.

6. THE BOARD HAS ALWAYS GIVEN CONSIDERATION TO THE QUESTION OF BUILD UP WHERE IT ARISES WITH RESPECT TO THE GRANTING OF OUTRIGHT CERTIFICATION OR POSTPONING CONSIDERATION UNTIL A VOTE CAN BE TAKEN. ON THE OTHER HAND, IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO LOOK AT THE DUTIES AND RESPONSIBILITIES OF EMPLOYEES AS THEY EXISTED ON THE DATE OF THE MAKING OF THE APPLICATION.

7. HAVING REGARD TO THE LONG STANDING PRACTICE OF THIS BOARD WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF PERSONS CLAIMED TO BE EMPLOYEES, WE ARE OF THE OPINION THAT THE RULING BY MR. S.G. GRIZZLE, EXAMINER, WAS CORRECT. THE BOARD THEREFORE CONFIRMS THE RULING MADE BY THE EXAMINER DURING THE EXAMINER'S HEARING.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

3643-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. VILLACENTRES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: T. EDWARDS FOR THE APPLICANT; DONALD J. MCKILLOP, Q.C., AND J. KRASKIN FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 27, 1973.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED OCTOBER 23, 1973 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE EVIDENCE ESTABLISHED THAT THE REGISTERED NURSES AND THE GRADUATE NURSES HAVE CERTAIN REPORTING FUNCTIONS. HOWEVER, OTHER THAN IN MATTERS PERTAINING TO THEIR PROFESSIONAL SKILLS AND RESPONSIBILITIES, THEY DO NOT EXERCISE INDEPENDENT AUTHORITY OVER OTHER EMPLOYEES. ANY SUPERVISORY DUTIES PERFORMED BY THE REGISTERED NURSES AND GRADUATE NURSES ARE PERFORMED IN STRICTLY CIRCUMSCRIBED AREAS AND SUCH FUNCTIONS ARE ONLY OCCASIONALLY PERFORMED AND ARE MERELY INCIDENTAL TO THE PRIMARY FUNCTIONS OF A REGISTERED NURSE. ANY FUNCTIONS THAT MAY BE CHARACTERIZED AS SUPERVISORY ARE SIMILAR TO THOSE EXERCISED BY "LEAD HANDS" WHO ALSO HAVE HIGHLY DEVELOPED TECHNICAL SKILLS AND SUCH FUNCTIONS ARE NOT MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE MAJORITY OF TIME SPENT BY THE REGISTERED NURSES AND GRADUATE NURSES IS SPENT PERFORMING THE NORMAL FUNCTIONS OF A REGISTERED OR GRADUATE NURSE WHO ARE ENGAGED IN A NURSING CAPACITY. SIMILARLY, REGISTERED NURSING ASSISTANTS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

3. COUNSEL FOR THE RESPONDENT CHARACTERIZED THE EVIDENCE OF THOSE WHO WERE EXAMINED AS "SELF-EFFACING". HOWEVER, IF THE BOARD WERE TO ACCEPT HIS ANALYSIS OF THEIR EVIDENCE THE BOARD WOULD HAVE TO BELIEVE THAT ALL THE WITNESSES WERE DELIBERATELY ATTEMPTING TO MISREPRESENT THEIR FUNCTIONS AND MISLEAD THE BOARD. WHILE THE BOARD ACCEPTS THE FACT THAT WITNESSES MAY INADVERTENTLY OR EVEN INTENTIONALLY COLOUR THEIR EVIDENCE TO SUPPORT WHAT THEY BELIEVE TO BE THEIR BEST INTERESTS, WE ARE NOT OF THE VIEW THAT THE WITNESSES EXAMINED BY THE BOARD'S EXAMINER SO DISTORTED THEIR EVIDENCE AS THE RESPONDENT WOULD HAVE US BELIEVE. IN ORDER TO REACH THE CONCLUSIONS SUGGESTED BY THE RESPONDENT, THE BOARD WOULD HAVE TO EMPHASIZE CERTAIN PORTIONS OF THE EVIDENCE TO THE POINT OF DISTORTING IT COMPLETELY OUT OF WHAT THE BOARD CONSIDERS TO BE ITS TRUE CONTEXT.

4. THE BOARD ACCORDINGLY FINDS THAT THE REGISTERED AND GRADUATE NURSES AND THE REGISTERED NURSING ASSISTANTS IN THIS CASE DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DEFINED BELOW.

5. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS BAYVIEW VILLA IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 1394 CANADIAN UNION OF PUBLIC EMPLOYEES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO WOULD OTHERWISE BE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY LOCAL 1394 CANADIAN UNION OF PUBLIC EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4751-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) v. WILSON-MUNROE COMPANY LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: C. MONK FOR THE APPLICANT; R. C. FILION, D. HERON AND B. JULIEN FOR THE RESPONDENT; T. ROSYSKI FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER O. HODGES:
DECEMBER 27, 1973.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT WAREHOUSE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT WAREHOUSE MANAGER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD WISHES TO CLARIFY A STATEMENT MADE TO THE PARTIES AT THE HEARING WITH RESPECT TO THE EXCLUSION FROM THE BARGAINING UNIT OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. WHERE A PARTY REQUESTS THE EXCLUSION OF BOTH CATEGORIES AND THE EMPLOYER HAS IN HIS EMPLOY BOTH CATEGORIES AS OF THE DATE OF THE APPLICATION (OR A PAST HISTORY THEREOF), THEN THE BOARD WILL ACCEDE TO THE REQUEST. BUT WHERE THE BOARD UPON THE REQUEST OF A PARTY IS ASKED TO EXCLUDE ONLY ONE CATEGORY AND THERE IS IN THE EMPLOY OF THE EMPLOYER AS OF THE DATE OF THE APPLICATION (OR A PAST HISTORY THEREOF) EMPLOYEES OF BOTH CATEGORIES, THE BOARD WILL ONLY ACCEDE TO THE REQUEST BY EXCLUDING BOTH CATEGORIES. BUT WHERE THE EMPLOYER HAS EMPLOYEES OF ONLY ONE CATEGORY IN HIS EMPLOY AS OF THE DATE OF THE APPLICATION (OR A PAST HISTORY THEREOF), THEN THE BOARD WILL ACCEDE TO THE REQUEST TO EXCLUDE ONLY THAT ONE CATEGORY.

4. THUS, IN THE INSTANT CASE, THE EMPLOYER HAS REQUESTED THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE EMPLOYER INDICATED IN "SCHEDULE B" FILED ALONG WITH ITS REPLY THAT THERE WERE NO EMPLOYEES EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK ON THE DATE THE APPLICATION WAS MADE. IT WAS ALSO DISCLOSED TO THE BOARD THAT ALTHOUGH THERE WAS A PAST HISTORY OF EMPLOYING STUDENTS THERE WAS NO HISTORY OF EMPLOYING TWENTY-FOUR HOUR EMPLOYEES. AS A RESULT, THE BOARD ACCEDES TO THE REQUEST OF THE RESPONDENT AND EXCLUDES FROM THE BARGAINING UNIT ONLY STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

5. THERE WAS ALSO FILED WITH THIS BOARD A STATEMENT OF DESIRE EXPRESSING EMPLOYEE OPPOSITION TO REPRESENTATION BY THE APPLICANT TRADE UNION. THE BOARD FOUND THAT SHOULD WEIGHT BE GIVEN TO THIS STATEMENT IT WOULD SO WEAKEN THE APPLICANT'S EVIDENCE OF MEMBERSHIP SO AS TO JUSTIFY A DIRECTION ORDERING A REPRESENTATION VOTE IN ACCORDANCE TO ITS PRACTICE. THE BOARD THEREFORE CALLED UPON THE REPRESENTATIVE FOR THE GROUP OF OBJECTORS TO SATISFY THE BOARD WITH RESPECT TO THE ORIGATION AND CIRCULATION OF THE PETITION.

6. MR. TERRY ROSYSKI EMPLOYED BY THE RESPONDENT AS AN "ORDER PICKER" IN ITS PLANT WAS THE SOLE WITNESS TO GIVE EVIDENCE IN SUPPORT OF THE PETITION. HE INDICATED TO THE BOARD THAT "HE TALKED WITH A FEW OF THE FELLOWS" ABOUT FILING A PETITION IN OPPOSITION TO THE APPLICANT'S APPLICATION FOR CERTIFICATION. AS A RESULT OF THIS INFORMAL TALK HE PREPARED THE PETITION AND UNDERTOOK THE RESPONSIBILITY OF SECURING THE SIGNATURES OF HIS FELLOW EMPLOYEES AT THE PLANT AND DURING WORKING HOURS. HE INDICATED THAT ALTHOUGH TWO SUPERVISORS

WERE ON DUTY AT THE TIME OF THE CIRCULATION OF THE STATEMENT, NEITHER KNEW THE PURPOSE OF HIS MISSION. UPON SECURING THE SIGNATURES, MR. ROSYSKI TESTIFIED THAT HE ASKED A SECRETARY IN THE RESPONDENT'S EMPLOY TO TYPE THE ENVELOPE DIRECTING THE PETITION TO THE BOARD, PAID THE NECESSARY REGISTRATION FEE FOR MAILING AND DIRECTED THE SECRETARY TO MAIL THE PETITION IN THE ORDINARY COURSE OF THE EMPLOYER'S POST.

7. MR. ROSYSKI TESTIFIED UPON CROSS-EXAMINATION THAT DURING THE COURSE OF CIRCULATING THE PETITION TO HIS COLLEAGUES THE PREAMBLE TO THE STATEMENT WAS LEFT BLANK. THERE WAS AT THAT TIME INDICATED A PRELIMINARY SENTENCE THAT HE WAS TO ACT AS THEIR REPRESENTATION BUT FOR REASONS LEFT UNEXPLAINED TO THE BOARD THE ACTUAL "STATEMENT OF DESIRE" WAS NOT INSERTED UNTIL AFTER ALL THE SIGNATURES WERE SECURED. MR. ROSYSKI WAS QUICK TO EXPLAIN HOWEVER THAT "THEY (REFERRING TO HIS CO-WORKERS) KNEW WHAT IT WAS FOR - THEY ASKED FOR IT."

8. THIS BOARD IS OF THE OPINION THAT THE FAILURE TO INSERT THE PREAMBLE TO THE STATEMENT OF DESIRE AT THE TIME THE SIGNATURES WERE SECURED IS FATAL. THE BOARD'S JURISPRUDENCE WITH RESPECT TO SUCH SHORTCOMINGS AMPLY DEMONSTRATES THE FUTILITY OF ATTACHING ANY WEIGHT TO SUCH PETITIONS. (SEE; BOYLE-MIDWAY CANADA LTD. OLRB M.R. DECEMBER 1966 697; PRESSLAND IRON AND STEEL LIMITED OLRB M.R. FEBRUARY 1966 817; BENNETT AND WRIGHT LTD. OLRB M.R. NOVEMBER 1965 514; DEVILBISS (CANADA) LIMITED OLRB M.R. NOVEMBER 1960 285). THE GENERAL REASONING BEHIND REFUSING TO ACCEPT THE AUTHENTICITY OF SUCH STATEMENTS OF DESIRE WAS POINTED OUT IN THE N.D. APPELATE LTD. CASE OLRB M.R. MAY 1963 104 AT P106 WHERE IT WAS INDICATED THAT IN ORDER TO FIND ANY CONNECTION BETWEEN THE DOCUMENT BEARING THE PREAMBLE AND THE SIGNATURES THE BOARD WOULD HAVE TO RELY ENTIRELY ON ORAL EVIDENCE. IN THAT CASE ONLY ONE PERSON WAS CALLED TO GIVE EVIDENCE WITH RESPECT TO ORIGINATION AND CIRCULATION. FOR THIS REASON, THE BOARD IN THOSE CIRCUMSTANCES COULD NOT ATTACH ANY RELIABILITY TO THE EVIDENCE ADDUCED, AND FOR THE SAME REASON, THE BOARD FINDS THAT THE STATEMENT OF DESIRE FILED HEREIN DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

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10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. D. BELL: DECEMBER 27, 1973.

THE STATEMENT - "THE FOLLOWING PEOPLE WORKING IN THE WHAREHOUSE DO NOT TO FORM A UNION" WAS NOT INSERTED UNTIL AFTER THE SIGNATURES WERE SECURED. THE FACT THIS WAS LEFT UNEXPLAINED TO THE BOARD SHOULD NOT BE FATAL TO THE STATEMENT OF DESIRE.

THE STATEMENT OF DESIRE DID HAVE THE FOLLOWING HEADING AT THE TIME THE SIGNATURES WERE SECURED.

"TERRY ROSYSKI 60 DIXON AVE TOR. ONT.
SPOKESMAN FOR WAREHOUSE STAFF AT THE
WILSON MUNROE COMP. LTD."

MR. ROSYSKI TESTIFIED THAT THE EMPLOYEES KNEW WHAT THEY WERE SIGNING. THIS WAS NOT DISPUTED. AS ELEVEN OF THE THIRTEEN EMPLOYEES WHOM THE UNION CLAIM IN MEMBERSHIP SIGNED THIS PETITION, I WOULD SEEK REAFFIRMATION OF THE DESIRE OF THE MAJORITY OF THE EMPLOYEES BY DIRECTING THAT A REPRESENTATION VOTE BE CONDUCTED.

4776-73-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. KOKOTOW LUMBER LIMITED (RESPONDENT).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. BRIXHE AND M. PARKER FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 27, 1973.

1. THIS IS AN APPLICATION FOR CERTIFICATION FOR A GROUP OF EMPLOYEES OF THE RESPONDENT "IN ITS FOREST OPERATIONS IN THE DISTRICT OF TIMISKAMING".

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3. THE RESPONDENT IN ITS REPLY PROPOSED THAT THE UNIT BE RESTRICTED TO THE TOWNSHIP OF MOREL (AND ADJACENT TOWNSHIPS THERETO) WHERE ITS WOODS OPERATIONS WERE CONFINED (AS OF THE DATE RELEVANT TO THIS APPLICATION).

4. THE BOARD'S POLICY OF DEFINING THE APPROPRIATE GEOGRAPHIC AREA IN BARGAINING UNITS PERTAINING TO WOODS OPERATIONS IS SET OUT IN THE HOWARD BIENVENUE INCORPORATED CASE OLRB M.R. JUNE 1966 P188. IN THAT CASE THE APPLICANT LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 APPLIED FOR A BARGAINING UNIT OF EMPLOYEES WHICH ENCOMPASSED THE WHOLE OF THE DISTRICT OF COCHRANE. THE BOARD DENIED THE APPLICANT ITS PROPOSED UNIT HOLDING THAT...

"...IT HAD BEEN THE ALMOST INVARIABLE PRACTICE OF THE BOARD IN APPLICATIONS COVERING WOODS OPERATIONS TO CONFINE THE GEOGRAPHIC AREA OF THE BARGAINING UNIT TO THE TOWNSHIP OR TOWNSHIPS IN WHICH THE RESPONDENT IS OPERATING AS OF THE DATE OF THE APPLICATION AND TO THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO. ALTERNATIVELY IN SOME INSTANCES THE BOARD HAS ISSUED CERTIFICATES COVERING AN AREA SPECIFIED BY CROWN LICENCES OR PERMITS BY THE

DEPARTMENT OF LANDS AND FORESTS." (NOW ISSUED
BY THE MINISTRY OF NATURAL RESOURCES).

5. THE BOARD PROCEEDED TO INDICATE TO THE REPRESENTATIVE OF THE APPLICANT THAT THE BOARD'S POLICY WITH RESPECT TO THE APPROPRIATE GEOGRAPHIC AREA IN APPLICATIONS INVOLVING WOODS OPERATIONS WAS THE DESCRIPTION SET OUT IN PARAGRAPH 3 HEREIN. THE BOARD FURTHER INFORMED THE REPRESENTATIVE OF THE APPLICANT THAT ALTHOUGH THE PROPOSED UNIT SUGGESTED BY THE RESPONDENT WAS IN CONSONANCE WITH BOARD PRACTICE, IT WOULD BE PREPARED TO ENTERTAIN THE APPLICANT'S REPRESENTATIONS WITH RESPECT TO DESCRIBING THE APPROPRIATE UNIT IN TERMS OF THOSE GEOGRAPHIC AREAS ENCOMPASSED BY THE CROWN TIMBER LICENCES ISSUED TO RESPONDENT UNDER THE AUTHORITY OF THE MINISTRY OF NATURAL RESOURCES.

6. MR. MARCEL PARKET WAS CALLED UPON BY THE APPLICANT TO ATTEST TO THE NATURE AND EXTENT OF THE RESPONDENT'S OPERATIONS. HE STATED HE HAS BEEN AN EMPLOYEE OF THE RESPONDENT FOR A PERIOD OF FIVE MONTHS. OWING TO THE SEASONAL NATURE OF THE RESPONDENT'S OPERATIONS, HE INDICATED THAT EMPLOYEES ARE USUALLY RETAINED ON A SHORT TERM BASIS. HE THEREFORE TOLD THE BOARD THAT HE HAD ALSO WORKED FOR THE RESPONDENT THE SEASON PRIOR TO THE LAUNCHING OF THE INSTANT APPLICATION. THE WITNESS INDICATED TO THE BOARD THAT HE WAS ASSIGNED TO THE TOWNSHIPS OF MOREL AND YARROW AT THE MATERIAL TIME OF THE INSTANT APPLICATION, AND IN THE AUTUMN OF 1972, HE WORKED AT THE RESPONDENT'S OPERATIONS IN THE TOWNSHIPS OF MELBA, BISLEY AND DUNMORE. THE WITNESS ALSO ATTESTED THAT HE WAS AWARE THAT THE RESPONDENT HAD CUTTING RIGHTS IN AREAS ENCOMPASSED BY THE TOWNSHIPS OF TERRY, ANGLEHART, RATTRAY AND CATHERINE (ALL OF WHICH ARE LOCATED IN THE DISTRICT OF TIMISKAMING). MR. PARKER ALSO STATED OUT HE THOUGHT THAT THE RESPONDENT HELD LICENCES FOR EACH OF THE TOWNSHIPS CITED IN HIS TESTIMONY.

7. IN CONSEQUENCE OF THE EVIDENCE ADDUCED THROUGH MR. PARKER, THE APPLICANT URGES THE BOARD TO ISSUE A CERTIFICATE COVERING THE GEOGRAPHIC TOWNSHIPS CITED THEREIN. THAT IS TO SAY, THE ASSERTION BY THE RESPONDENT IN ITS REPLY THAT ITS OPERATIONS ARE CONFINED TO THE TOWNSHIP OF MOREL HAS BEEN CONTRADICTED BY VIVA VOCE TESTIMONY. IT WAS ALSO URGED (AND THE BOARD WAS INVITED TO DRAW THIS INFERENCE) THAT EMPLOYEES COULD NOT WORK IN THE TOWNSHIPS REFERRED TO UNLESS THE RESPONDENT HELD THE APPROPRIATE CROWN RIGHTS. IT FOLLOWED THEREFORE THAT THE BOARD SHOULD BE SATISFIED THAT THE APPROPRIATE UNIT BE DESCRIBED IN TERMS CONSISTENT WITH THE BOARD'S ALTERNATE PRACTICE RELATING TO WOODS OPERATIONS. [SEE PARAGRAPH 4 (SUPRA)].

8. THE BOARD EXPRESSED SOME MISGIVING WITH RESPECT TO THE APPLICANT'S REPRESENTATIONS. IT WAS INDICATED AT THE HEARING THAT IF THE APPLICANT COULD FILE WITH THE BOARD EVIDENCE THAT THE APPROPRIATE CROWN LICENCES HAVE ISSUED THE RESPONDENT UNDER THE AUTHORITY OF THE MINISTRY OF NATURAL RESOURCES FOR THE TOWNSHIPS CITED, THE BOARD MAY BE PREPARED TO ADD GREATER WEIGHT TO THE APPLICANT'S SUBMISSIONS.

9. THE BOARD WAS PREPARED TO CONFER UPON THE APPLICANT THE OPPORTUNITY TO SO SATISFY THE BOARD AND PROCEEDED TO RESERVE ITS DECISION ON THE MATTER OF THE APPROPRIATE BARGAINING UNIT SUBJECT TO THE APPLICANT'S UNDERTAKING TO PROVIDE THE REQUIRED INFORMATION.

10. BY LETTER DATED DECEMBER 13, 1973 THE BOARD RECEIVED THE FOLLOWING CORRESPONDENCE FROM A REPRESENTATIVE OF THE MINISTRY OF NATURAL RESOURCES;

"TO WHOM IT MAY CONCERN:

KOKOTOW LUMBER LIMITED OF KIRKLAND LAKE,
ONTARIO, AT PRESENT HOLD THE FOLLOWING
AREAS UNDER CROWN TIMBER LICENCE;

<u>LICENCE No.</u>	<u>TOWNSHIPS</u>	<u>AREA</u>	
346000	YARROW & MOREL	14.7	SQ. MLS.
346600	DUNMORE	0.6	"
216800	SKEAD, RATTRAY, HEARST MCFADDEN & BAYLY	106.03	"
332900	MOREL	3.1	"
333000	DUNMORE	0.7	"
331311	MELBA & BISLEY	19.6	"

(SIGNED)

D. A. DENTON,
TIMBER SALES BRANCH."

11. IN CONSEQUENCES OF THE EVIDENCE ADDUCED AND THE REPRESENTATIONS MADE AT THE HEARING THE BOARD IS PREPARED TO MAKE THE FOLLOWING FINDINGS;

(I) THE CLAIM THAT THE RESPONDENT IS ENGAGED IN WOODS OPERATIONS IN THE TOWNSHIPS OF TERRY, ANGLEHART AND CATHERINE AT THE MATERIAL TIME OF THIS APPLICATION ARE NOT SUPPORTED BY THE EVIDENCE;

(II) THE CLAIM THAT THE RESPONDENT HAS ENGAGED IN WOODS OPERATIONS IN THE TOWNSHIPS OF MELBA, BISLEY AND DUNMORE IS WITH SOME FOUNDATION BUT OF DUBIOUS RELEVANCE TO THE INSTANT APPLICATION IN

THAT SUCH OPERATIONS PERTAINED TO THE AUTUMN OF 1972.

- (iii) THE RESPONDENT DOES HOLD CROWN TIMBER RIGHTS IN GEOGRAPHIC AREAS COVERED BY THE TOWNSHIPS OF SKEAD, RATTRAY, HEARST, MCFADDEN AND BAYLY FOR WHICH THE EVIDENCE IS TENUOUS WITH RESPECT TO THE ACTUAL OR TENTATIVE ENGAGEMENT BY THE RESPONDENT IN WOODS OPERATIONS AT A TIME RELEVANT TO THE INSTANT APPLICATION.
- (iv) THE ONLY UNCONTRADICTED EVIDENCE AVAILABLE TO THE BOARD IS THAT THE RESPONDENT IS ENGAGED IN WOODS OPERATIONS AT A TIME RELEVANT TO THE INSTANT APPLICATION IN THE GEOGRAPHIC AREA COVERED BY THE TOWNSHIPS OF YARROW AND MOREL.

12. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS WOODS OPERATION IN THE TOWNSHIPS OF MOREL AND YARROW, AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4276-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1187 - AFL CIO CLC (APPLICANT) v. THE CORPORATION OF THE CITY OF KITCHENER (RESPONDENT) v. THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL UNION #791, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: P. L. SCHLOTZHAUER AND J. A. KING FOR THE APPLICANT; J. P. SANDERSON AND F. KOURIG FOR THE RESPONDENT; W. BROWN FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 28, 1973.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED SEPTEMBER 13, 1973, THE EXAMINER WAS AUTHORIZED TO INQUIRE INTO CERTAIN MATTERS AFFECTING THE FIVE EMPLOYEES OF THE RESPONDENT

CLASSIFIED AS DISPATCHERS. THE EXAMINER CONVENED VARIOUS MEETINGS OF THE PARTIES IN THIS REGARD WHICH CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED NOVEMBER 2, 1973. THE MATTER THEN CAME ON BEFORE US ON DECEMBER 18, 1973, FOR THE PURPOSE OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES CONCERNING THE CONCLUSION TO BE DRAWN FROM THE SAID REPORT.

2. IT IS THE SUBMISSION OF THE INTERVENER THAT THESE DISPATCHERS ARE COVERED BY THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE INTERVENER AND THE RESPONDENT DATED MAY 27, 1971, AND THAT IN THIS REGARD THEY SHARE A COMMUNITY OF INTEREST WITH THE OFFICE AND CLERICAL EMPLOYEES AS REPRESENTED THEREIN. THE APPLICANT AND THE RESPONDENT, ON THE OTHER HAND, TAKE THE POSITION THAT NO SUCH COMMUNITY OF INTEREST EXISTS AND THAT IN ANY EVENT, THESE DISPATCHERS ARE MORE CLOSELY ALLIED WITH THE GAS AND WATER WORKERS OF THE RESPONDENT EMPLOYED IN ITS UTILITIES DIVISION. (IN THIS REGARD SEE THE CORPORATION OF THE CITY OF KITCHENER CASE [1973] OLRB M.R. 306, WHERE BY A SUBSEQUENT DECISION DATED AUGUST 3, 1973, AND PURSUANT TO THE PROVISIONS OF SECTION 55(6) OF THE LABOUR RELATIONS ACT, THE BOARD MADE A DECLARATION OF SUCCESSOR RIGHTS IN FAVOUR OF THE APPLICANT).

3. HAVING CAREFULLY REVIEWED THE EVIDENCE AS CONTAINED IN THE SAID REPORT OF THE EXAMINER, AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, WE ARE NOT SATISFIED THAT THESE DISPATCHERS FALL WITHIN THE PURVIEW OF THE SAID COLLECTIVE AGREEMENT, NOR ARE WE CONVINCED HAVING REGARD TO THE PRINCIPLES AS SET OUT IN THE USARCO LIMITED CASE, OLRB M.R. SEPTEMBER 1967, P. 526, THAT THESE EMPLOYEES SHARE A SUFFICIENT COMMUNITY OF INTEREST WITH THE RESPONDENT'S OFFICE AND CLERICAL EMPLOYEES WHICH WOULD RENDER THEM APPROPRIATE FOR INCLUSION IN THAT BARGAINING UNIT.

4. THE RESPONDENT HAS ALSO DRAWN TO THE ATTENTION OF THE BOARD THE FURTHER FACTOR THAT ALL FIVE OF THE DISPATCHERS AFFECTED BY THIS APPLICATION HAVE SIGNED MEMBERSHIP CARDS IN THE APPLICANT AND THAT NONE OF THESE EMPLOYEES HAVE ATTENDED THE HEARING IN SUPPORT OF THE INTERVENER'S POSITION IN THIS REGARD. IT IS CLEAR THAT SECTION 6(1) OF THE LABOUR RELATIONS ACT DOES CONTEMPLATE THE WISHES OF THE EMPLOYEES AS A FACTOR WHICH MAY BE CONSIDERED BY THIS BOARD IN DETERMINING THE QUESTION OF THE APPROPRIATE BARGAINING UNIT. IN OUR OPINION, WE ARE ENTITLED TO DRAW THE INFERENCE IN THESE CIRCUMSTANCES, THAT THE APPLICANT EXPRESSES THE WISHES OF THESE EMPLOYEES AS THEIR REPRESENTATIVES AT THE HEARING. (IN THIS REGARD SEE THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT CASE OLRB M.R. JUNE 1969 P. 340 AS QUOTED IN THE EAST YORK PUBLIC LIBRARY BOARD CASE [1971] OLRB 120 AT PAGE 122 AND 123).

5. HAVING REGARD TO THE FOREGOING, THE BOARD THEREFORE FINDS THAT ALL DISPATCHERS EMPLOYED BY THE RESPONDENT IN ITS UTILITIES DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND CLERICAL STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 31, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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4575-73-M: FRANK SELTERS (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

4709-73-M: GLENDALE SPINNING MILLS LIMITED (EMPLOYER) V. TEXTILE WORKERS UNION OF AMERICA CLC, AFL-CIO AND ITS LOCAL 1070 (TRADE UNION). (GRANTED).

4760-73-M: COPELAND REFRIGERATION OF CANADA, LIMITED (APPLICANT) V. THE INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS AFL. CIO. CLC. (RESPONDENT). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING NOVEMBER

4350-73-R: THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS No. 27, No. 666, No. 681, No. 1133, No. 1963, No. 3227, No. 3233 THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANTS) V. ZORGE CONSTRUCTION COMPANY LIMITED AND A.G.Z. DEVELOPMENTS LIMITED (RESPONDENTS). (WITHDRAWN).

4624-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN PHOENIX STEEL PRODUCTS LTD. (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTE

2336-72-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18 AND JOHN E. SMITH & SON LATH, PLASTERER AND ACOUSTICAL CONTRACTORS (1968) LIMITED (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

NOVEMBER

1581-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1 (APPLICANT) V. TORONTO HYDRO ELECTRIC SYSTEM (RESPONDENT). (WITHDRAWN).

3067-72-M: TORONTO STAR LIMITED (APPLICANT) V. LOCAL 87 TORONTO NEWSPAPER GUILD (RESPONDENT). (WITHDRAWN).

3213-72-M: TORONTO STAR LIMITED (APPLICANT) V. LOCAL 87 TORONTO NEWSPAPER GUILD (RESPONDENT). (WITHDRAWN).

3628-73-M: THE TORONTO NEWSPAPER GUILD, LOCAL 87 OF THE NEWSPAPER GUILD (APPLICANT) V. TORONTO STAR LIMITED (RESPONDENT). (WITHDRAWN).

4395-73-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING AND ENGINEERING, LIMITED (RESPONDENT). (WITHDRAWN).

4530-73-M: CANADIAN UNION OF PUBLIC EMPLOYEES & ITS LOCAL 1616 (APPLICANT) V. COMMERCIAL CATERERS LIMITED (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 96

2977-72-M: MUTUAL ELECTRIC COMPANY LIMITED (EMPLOYER) V. LOCAL UNION 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (TRADE UNION). (DISMISSED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER

BARGAINING AGENTS CERTIFIED DURING DECEMBER

NO VOTE CONDUCTED

3174-72-R: MECHANICAL CONTRACTORS ASSOCIATION, KINGSTON (APPLICANT) V. LOCAL UNION 221 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENT) V. ELECTRICAL POWER SYSTEM CONSTRUCTION ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYERS OF PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS, STEAMFITTERS' APPRENTICES, WELDERS AND GAS FITTERS ON WHOSE BEHALF THE RESPONDENT IS ENTITLED TO BARGAIN IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC, LEEDS AND THAT PART OF THE COUNTY OF GRENVILLE WEST OF EDWARD STREET IN THE TOWN OF PRESCOTT AND IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT).

3491-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 736 (APPLICANT) V. COOPER CONSTRUCTION COMPANY (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH INCLUDING PART OF TOWNSHIP OF NORTH DUMFRIES ANNEXED FROM BEVERLY TOWNSHIP AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

3643-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. VILLACENTRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BAYVIEW VILLA IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 1394 CANADIAN UNION OF PUBLIC EMPLOYEES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO WOULD OTHERWISE BE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY LOCAL 1394 CANADIAN UNION OF PUBLIC EMPLOYEES." (12 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD FOUND THAT THE CRAFT DIRECTOR IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT IN THIS MATTER.).

[1973] 2 OLRB M.R. - PAGE 646.

3850-73-R: NURSES' ASSOCIATION GREATER NIAGARA GENERAL HOSPITAL (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. CSAO NATIONAL (INC.) (INTERVENER).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CO-ORDINATORS AND PERSONS ABOVE THE RANK OF CO-ORDINATOR." (127 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK EMPLOYED BY THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CO-ORDINATORS AND PERSONS ABOVE THE RANK OF CO-ORDINATOR." (19 EMPLOYEES IN THE UNIT).

4276-73-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1187 - AFL CIO CLC (APPLICANT) V. THE CORPORATION OF THE CITY OF KITCHENER (RESPONDENT) V. THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL UNION #791, CHARTERED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (INTERVENER).

UNIT: "ALL DISPATCHERS EMPLOYED BY THE RESPONDENT IN ITS UTILITIES DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND CLERICAL STAFF," (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

[1973] 2 OLRB M.R. - PAGE 653.

4320-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. INGLIS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT 324 HILTON DRIVE, STONEY CREEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

[1973] 2 OLRB M.R. - PAGE 645.

4421-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. SIMON-WOOD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 607.

4438-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. WARDET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4619-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HASHMAN CONSTRUCTION - DIVISION OF TRISTAR WESTERN LTD. (RESPONDENT) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 630.

4621-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TYNDALL DEVELOPMENT CORPORATION LTD. (RESPONDENT) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4634-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. BEAVER ELECTRONICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS ENGAGED IN INSTALLATION WORK OUTSIDE THE PLANT, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

4651-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF RAINY RIVER, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4652-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MARIOFINO EXCAVATING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (2 EMPLOYEES IN THE UNIT).

4660-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA LOCAL UNION 141 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE RESPONDENT'S SHOP ON CRUMLIN SIDE ROAD IN LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE APPLICANT AND THE RESPONDENT AND THE INTERVENER AND THE RESPONDENT." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

4664-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. JEN-MAR CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

4673-73-R: CARLO'S ELECTRIC EMPLOYEES ASSOCIATION (APPLICANT) V. CARLO'S ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE COUNTY OF

ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE)." (19 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 639.

4674-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF EAST WHITBY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF EAST WHITBY SAVE AND EXCEPT ROADS SUPERINTENDENT THOSE ABOVE THE RANK OF ROADS SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF." (5 EMPLOYEES IN THE UNIT).

4680-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF IGNACE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF IGNACE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

4726-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALESMEN AND SALES TRAINEES, PLANT MANAGER'S SECRETARY, INDUSTRIAL NURSE, PLANT BUYER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL CHEMICAL WORKERS UNION LOCAL NO. 186." (14 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION PERTAIN TO THE RESPONDENT'S PLANT 533 AT LONDON.).

4729-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. UNITED PAPER MILLS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT PERSONS ENGAGED IN THE OCCUPATION OF SALES PROMOTION ARE EXCLUDED FROM THE BARGAINING UNIT.).

4733-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF SCOTT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SCOTT SAVE AND EXCEPT ROADS SUPERINTENDENT THOSE ABOVE THE RANK OF ROADS SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF." (4 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 606.

4737-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF UXBRIDGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF UXBRIDGE, SAVE AND EXCEPT ROADS SUPERINTENDENT, THOSE ABOVE THE RANK OF ROADS SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4741-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, A.F.L., C.I.O., C.L.C. S.E.I.U. (APPLICANT) V. BEAVER FOOD SERVICE ASSOCIATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF BEAVER FOOD SERVICE ASSOCIATES LTD. AT PALMERSTON AND DISTRICT HOSPITAL, PALMERSTON, ONTARIO SAVE AND EXCEPT FOOD SUPERVISOR, PERSONS ABOVE THE RANK OF FOOD SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

4742-73-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. BEAVER FOOD SERVICE ASSOCIATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF BEAVER FOOD SERVICE ASSOCIATES LTD. AT PALMERSTON AND DISTRICT HOSPITAL, PALMERSTON, ONTARIO SAVE AND EXCEPT FOOD SUPERVISOR, PERSONS ABOVE THE RANK OF FOOD SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT IN DETERMINING A PART-TIME UNIT TO BE APPROPRIATE IN AN APPLICATION FOR CERTIFICATION OR AS AN EXCLUSIONARY CATEGORY TO AN APPLICATION FOR CERTIFICATION OF A PERMANENT UNIT "PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" ARE TREATED AS ONE CATEGORY. THE FUTILITY OF DIVIDING THE UNIT INTO SEPARATE CATEGORIES HAS BEEN CITED ON MANY OCCASIONS BY THE BOARD WITH RESPECT TO THE FUTURE STABILITY OF COLLECTIVE BARGAINING BETWEEN THE PARTIES. (SEE; CHAPPLES DRUG STORES LIMITED CASE OLRB M.R. JULY 1970 530; VERMILLION BAY CO-OPERATIVE LTD. CASE OLRB M.R. MARCH 1973 179; ROBERT CRUIKSHANK CLEANING CONTRACTORS LTD. OLRB M.R. OCTOBER 1972, 882.)).

4749-73-R: NURSES' ASSOCIATION PEMBROKE GENERAL HOSPITAL (APPLICANT) V. PEMBROKE GENERAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL LAY REGISTERED AND GRADUATE NURSES ENGAGED IN A NURSING

CAPACITY EMPLOYED BY THE RESPONDENT AT ITS HOSPITAL IN PEMBROKE, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (72 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL LAY REGISTERED AND GRADUATE NURSES ENGAGED IN A NURSING CAPACITY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD EMPLOYED BY THE RESPONDENT AT ITS HOSPITAL AT PEMBROKE, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (23 EMPLOYEES IN THE UNIT).

4751-73-R: UNITED PAPERWORKERS INTERNATIONAL UNION (APPLICANT) V. WILSON-MUNROE COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT WAREHOUSE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT WAREHOUSE MANAGER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

[1973] 2 OLRB M.R. - PAGE 647.

4753-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDEPENDENT FUELS & LUMBER LTD. (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TRUCK DRIVERS WHO ARE NOT ENGAGED IN SERVICING OIL BURNERS, AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT WITH THE INTERNATIONAL WOODWORKERS OF AMERICA." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4754-73-R: CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. GUELPH GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEDICAL LABORATORY TECHNOLOGISTS, ASSISTANT MEDICAL LABORATORY TECHNOLOGISTS, RADIOLOGY TECHNICIANS, ASSISTANT RADIOLOGY TECHNICIANS, ALL RESPIRATORY TECHNOLOGY THERAPISTS AND ASSISTANT RESPIRATORY TECHNOLOGY THERAPISTS EMPLOYED BY GUELPH GENERAL HOSPITAL AT GUELPH ONTARIO, SAVE AND EXCEPT CHIEF LABORATORY TECHNOLOGIST, CHIEF RADIOLOGY TECHNICIAN, CHIEF RESPIRATORY THERAPIST AND THOSE ABOVE THE RANK OF CHIEF LABORATORY TECHNOLOGIST, CHIEF RADIOLOGY TECHNICIAN AND CHIEF RESPIRATORY THERAPIST, STUDENT TECHNOLOGISTS, STUDENT TECHNICIANS, STUDENT RESPIRATORY THERAPISTS, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND C.U.P.E. LOCAL #57 AND THE NURSES ASSOCIATION, GUELPH GENERAL HOSPITAL." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4766-73-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. 207 WESTON ROAD LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND THOSE PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4769-73-R: SERVICE EMPLOYEES' UNION LOCAL 210 (APPLICANT) v. THE METROPOLITAN GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WINDSOR EMPLOYED IN ITS MEDICAL LABORATORY DEPARTMENT AS GRADUATE REGISTERED TECHNOLOGISTS, GRADUATE REGISTERED TECHNICIANS, GRADUATE NON-REGISTERED TECHNOLOGISTS, GRADUATE NON-REGISTERED TECHNICIANS, AND MEDIA, TISSUE AND E.K.G. TECHNICIANS, SAVE AND EXCEPT SUPERVISORY (CHARGE) TECHNOLOGISTS AND PERSONS ABOVE THE RANK OF SUPERVISORY (CHARGE) TECHNOLOGISTS, GRADUATE PHARMACISTS, BIOCHEMIST, STUDENTS IN TRAINING, PERSONS REGULARLY EMPLOYED FOR 15 HOURS OR LESS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND NURSES' ASSOCIATION METROPOLITAN GENERAL HOSPITAL, THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1124, SERVICE EMPLOYEES' UNION LOCAL 210, BY A COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102 WHICH EXPIRED OCTOBER 31ST, 1973 AND PERSONS INCLUDED IN A CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD ISSUED ON MAY 15TH, 1973 TO THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 911." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4770-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. THE WHITE & COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

4771-73-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION LOCAL 9-593 (APPLICANT) v. BP OIL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT MAINGATE TERMINAL, MISSISSAUGA, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHERS, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

4776-73-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. KOKOTOW LUMBER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS WOODS OPERATION IN THE TOWNSHIPS OF MOREL AND YARROW, AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SCALERS." (18 EMPLOYEES IN THE UNIT).

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4779-73-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION LOCAL 351 (APPLICANT) V. CANADIAN SILK MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SUDBURY, ONTARIO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4780-73-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. WESTCANE SUGAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OSHAWA PLANT, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, SUGAR BOILERS, LABORATORY TECHNICIANS, SECURITY GUARDS, STATIONARY ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4785-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. W. H. OLSEN MANUFACTURING CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (152 EMPLOYEES IN THE UNIT).

4790-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. JOSEPH A. WATTERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4796-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF WOODHOUSE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WOODHOUSE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

4798-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF WALPOLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF WALPOLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

4799-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF CHARLOTVILLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHARLOTVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

4804-73-R: LOCAL 219, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. "SOUTHERN DEMING" DIVISION OF CRANE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHARLOTTENBURG, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND ASSISTANT FOREMAN, OFFICE, CLERICAL AND SALES STAFF, QUALITY CONTROL PERSONNEL, INDUSTRIAL ENGINEERING PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED UNDER A CO-OPERATIVE UNIVERSITY OR SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4820-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MCCARRON PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4821-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 597 (APPLICANT) V. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA, AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

4823-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOHANN KELLER (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (NO EMPLOYEES IN THE UNIT).

4827-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (APPLICANT) V. CHARLES NICOL CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4833-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. G. C. RENTALS AND ENTERPRISES, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4834-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. WESTCANE SUGAR LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM, AT OSHAWA, ONTARIO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

4858-73-R: SHEET METAL WORKERS, INTERNATIONAL ASSOCIATION, LOCAL UNION #504 (APPLICANT) V. CAMBRIAN PROTECTIVE ROOFING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE ENGAGED IN ROOFING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4864-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (APPLICANT) V. GILBERT GALIPEAU WELDING & STEEL ERECTION SERVICES INC. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

4894-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) V. E & E SEEGRILLER LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (53 EMPLOYEES IN THE UNIT).

4900-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 200 - OTTAWA (APPLICANT) V. VENETIAN PAINTERS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

4912-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. MURHAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4913-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891 (APPLICANT) V. D. M. D. TRIANGLE LATHING ACOUSTICS AND DRYWALL (RESPONDENT) V. WOOD, WIRE, & METAL LATHERS INTERNATIONAL UNION LOCAL 562 (INTERVENER).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRY-WALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

4932-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS - LOCAL UNION #700 (APPLICANT) V. REDIRACK INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3837-73-R: NURSES' ASSOCIATION ST. MICHAEL'S HOSPITAL (APPLICANT) V. ST. MICHAEL'S HOSPITAL (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES OF THE RESPONDENT ENGAGED IN A NURSING CAPACITY AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, HEAD NURSES, PERSONS ABOVE THE RANKS OF SUPERVISOR AND HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (595 EMPLOYEES IN THE UNIT). (...THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED AT ST. MICHAEL'S SCHOOL OF NURSING ARE NOT INCLUDED IN THE BARGAINING UNIT. ...THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	394
NUMBER OF PERSONS WHO CAST BALLOTS	394
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	294
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	98

3943-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WINDSOR WESTERN HOSPITAL CENTRE INC. (RESPONDENT) V. SERVICE EMPLOYEES INTERNATIONAL UNION (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO EACH OF THE FOLLOWING: BOARD OF GOVERNORS, EXECUTIVE DIRECTOR, ADMINISTRATORS, OFFICE MANAGER, DIRECTOR OF MEDICAL SERVICES, DIRECTORS OF NURSING, DIRECTOR OF CLINICAL AND PROFESSIONAL SERVICES, PERSONNEL MANAGER, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 210, CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102, CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1132, NURSES ASSOCIATION - I.O.D.E. HOSPITALS WINDSOR, NURSES ASSOCIATION - RIVERVIEW HOSPITAL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND STUDENTS EMPLOYED UNDER A CO-OPERATIVE TRAINING PROGRAMME WITH A COMMUNITY COLLEGE." (104 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EXECUTIVE DIRECTOR, ADMINISTRATORS, DIRECTOR OF CLINICAL AND PROFESSIONAL SERVICES, OFFICE MANAGER, PERSONNEL MANAGER, PURCHASING AGENT, BUDGET ANALYST, BUYER, DISPATCHER, STOREKEEPERS, PROJECT MANAGER, SYSTEMS ANALYST, PUBLIC RELATIONS OFFICER, PLACEMENT AND TRAINING OFFICER, INFECTION CONTROL OFFICER, MEDICAL RECORDS SUPERVISORS, ACCOUNTING

SUPERVISOR, CHIEF SWITCHBOARD OPERATOR, DIRECTOR OF ADMINISTRATION, REGIONAL CHILDREN'S CENTRE, PROFESSIONAL STAFF, PARA-MEDICAL STAFF, CHILD-CARE WORKERS, TECHNICIANS AND TECHNOLOGISTS ARE NOT INCLUDED IN THE BARGAINING UNIT.)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		56
NUMBER OF PERSONS WHO CAST BALLOTS	56	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	47	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

4687-73-R: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS
AFL-CIO-CLC (APPLICANT) v. FLECK MANUFACTURING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (424 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		382
NUMBER OF PERSONS WHO CAST BALLOTS	336	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	185	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	148	

4694-73-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. SCHOLL
(CANADA) INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		63
NUMBER OF PERSONS WHO CAST BALLOTS	57	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	42	
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE SCHOLL MFG. EMPLOYEES' UNION	13	

4703-73-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. REXWOOD PRODUCTS LIMITED (RESPONDENT) V. THE REXWOOD EMPLOYEES ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT AND YARD OPERATIONS AT HAILEYBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED ON CONSTRUCTION." (133 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	127
NUMBER OF PERSONS WHO CAST BALLOTS	123
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	92
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	31

4732-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (110 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	108
NUMBER OF PERSONS WHO CAST BALLOTS	108
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	61
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	46

4739-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON-MUTUAL WAREHOUSING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSING OPERATION AT 137 HORNER AVENUE, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

4740-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON-MUTUAL WAREHOUSING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSING OPERATION AT 98 RUTHERFORD ROAD, BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

3663-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. STAMFORD INSULATION CO. LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 95 (INTERVENER).

UNIT: "ALL INSULATORS AND INSULATORS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN ONTARIO EXCLUDING THE COUNTIES OF RENFREW, LANARK, CARLETON, DUNDAS, RUSSELL, STORMONT, PRESCOTT AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

4293-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF HASTINGS (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, ASSISTANT TO THE COUNTY ENGINEER, DAY NURSERY SUPERVISOR, OFFICE MANAGER, BUILDING SUPERINTENDENT, SECRETARY TO THE COUNTY ENGINEER, SECRETARY TO THE ADMINISTRATOR CLERK TREASURER, EMPLOYEES IN THE HOMES FOR THE AGED, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		30
NUMBER OF PERSONS WHO CAST BALLOTS	28	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

4432-73-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. SUDBURY & DISTRICT SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT SHELTER MANAGER, PERSONS ABOVE THE RANK OF SHELTER MANAGER, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER DIRECTED IN ITS DECISION DATED OCTOBER 29TH, 1973 THAT...THE REGISTRAR CAUSE THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE IN THIS MATTER TO BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		12
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	3	

4446-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. VS SERVICES LTD. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS FOOD MANAGEMENT SERVICES IN THE DIETARY DEPARTMENT AT THE PORT HOPE AND DISTRICT HOSPITAL AT PORT HOPE, SAVE AND EXCEPT MANAGER, CHEF, DIETITIANS, STUDENT DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS FOOD MANAGEMENT SERVICES IN THE DIETARY DEPARTMENT AT THE PORT HOPE AND DISTRICT HOSPITAL AT PORT HOPE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT MANAGER, CHEF, DIETITIANS, STUDENT DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT). (THE BOARD DIRECTED IN ITS DECISION DATED NOVEMBER 1ST, 1973 THAT ... THE BALLOT BOX CONTAINING ALL THE BALLOTS CASE IN THE REPRESENTATION VOTE IN BARGAINING UNIT #1 BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION BY THE BOARD.).

NUMBER OF NAMES OF PERSONS ON VOTERS		
LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	3	

4482-73-R: CANADIAN TRANSPORTATION WORKER'S UNION #200 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. CATHCART FREIGHT LINES (PETERBOROUGH) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS		
LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

4573-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF DARLINGTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROADS SUPERINTENDENT, CLERK, AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS		
LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	1	

4601-73-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC (APPLICANT) V. THE HERITAGE NURSING HOMES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECURITY GUARDS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (90 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		71
NUMBER OF PERSONS WHO CAST BALLOTS		60
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	40	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	18	

4602-73-R: NURSES' ASSOCIATION ST. MICHAEL'S HOSPITAL (APPLICANT) V. ST. MICHAEL'S HOSPITAL (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES ENGAGED IN A NURSING CAPACITY REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND HEAD NURSES AND PERSONS ABOVE THE RANKS OF SUPERVISOR AND HEAD NURSE." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS		16
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	1	

4666-73-R: NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL HAMILTON (APPLICANT) V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK IN A NURSING CAPACITY AT ITS HOSPITAL IN HAMILTON, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (133 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		133
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	32	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

3702-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. GIGNAC, SUTTS, NOSANCHUK (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (15 EMPLOYEES).

4227-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SENTINEAL TRANSPORTATION SYSTEMS LTD. (RESPONDENT). (5 EMPLOYEES).

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4343-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. VROOM DEVELOPMENTS (CENTRAL) LIMITED (RESPONDENT). (2 EMPLOYEES).

4365-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. AIR MASTER OF CANADA LIMITED (RESPONDENT). (37 EMPLOYEES).

4444-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALWELL FORMING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (58 EMPLOYEES).

4470-73-R: AMALGAMATED JEWELRY, AND ALLIED TRADES WORKERS UNION, LOCAL 33, TORONTO, AFFILIATED WITH INTERNATIONAL JEWELRY WORKERS UNION CLC, AFL-CIO (APPLICANT) V. REMBRANDT JEWELRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (238 EMPLOYEES).

4491-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BRUCE FUELS LIMITED (RESPONDENT). (1 EMPLOYEE).

4699-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MARTINI READY-MIX (RESPONDENT). (NO EMPLOYEES).

4744-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LINDSTROM CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

4762-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLOKE CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

4768-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCK UNIVERSITY (RESPONDENT). (165 EMPLOYEES).

4791-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PLUMMER MEMORIAL PUBLIC HOSPITAL (SAULT ALGOMA AMBULANCE SERVICE) (RESPONDENT) V. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER). (27 EMPLOYEES).

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4865-73-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DEEP DIVING SYSTEMS LTD. (RESPONDENT). (8 EMPLOYEES).

4871-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. INDUSTRIAL CONSTRUCTION DIVISION ALLIED STRUCTURAL STEEL COMPANY (RESPONDENT). (2 EMPLOYEES).

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4908-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. ROBERT McALPINE LTD. (RESPONDENT). (5 EMPLOYEES).

4920-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. GREY & WELLINGTON CONSTRUCTION LIMITED (RESPONDENT). (9 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

4653-73-R: LOCAL 536 OF THE INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DUPONT OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MAITLAND WORKS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE, TECHNICAL, ENGINEERING AND MEDICAL STAFF, SECURITY GUARDS, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT." (20 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

4688-73-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL CIO CLC (APPLICANT) V. TRENT RUBBER SERVICES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (112 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		100
NUMBER OF PERSONS WHO CAST BALLOTS	94	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	62	

4725-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. D. H. HOWDEN & Co. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (137 EMPLOYEES). (THE BOARD DIRECTED THAT ALL PERSONS EMPLOYED AT 255 HORTON STREET, LONDON BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		117
NUMBER OF PERSONS WHO CAST BALLOTS	113	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	50	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	61	

4759-73-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. DAD'S COOKIES LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS		40
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	27	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

3703-73-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. FLOYD SIDNEY ZALEV (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS		5
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	3	

4110-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CANVIL, LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS		10
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

4271-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL UNION 114 (APPLICANT) V. STRADWICK INDUSTRIES LTD. (RESPONDENT) V. THE ONTARIO PROVINCIAL CONFERENCE MARBLE, TILE, TERRAZZO, CEMENT MASONS, RESILIENT FLOOR LAYERS & THEIR HELPERS OF THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE LAYING OF RESILIENT TILES, HARDWOOD TILES, SHEET GOODS, LINOLEUM AND CARPETS IN THE COUNTY OF

LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

4360-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT MERCHANDISE MANAGERS, PERSONS ABOVE THE RANK OF MERCHANDISE MANAGER, FOOD SERVICE MANAGERESS, AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT GRADUATE AND UNDER-GRADUATE PHARMACISTS ARE ABOVE THE RANK OF MERCHANDISE MANAGER AND ARE ACCORDINGLY EXCLUDED FROM THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

4475-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. ASTRON SPECIALTY METALS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT). (..THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION BY THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

4492-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WILLEY AND BROWN FUELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND TRUCK DRIVERS WHO ARE NOT ENGAGED IN SERVICING OIL BURNERS." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

4557-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WETMORE WELDING SUPPLIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BRAMPTON, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, THOSE ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE, SALES AND SERVICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

4629-73-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BIC PEN OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		59
NUMBER OF PERSONS WHO CAST BALLOTS	59	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	44	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

3572-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TOWLAND-HEWITSON CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

4793-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. POLYMER CORPORATION LIMITED (RESPONDENT). (4 EMPLOYEES).

4794-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. POLYSAR LIMITED (RESPONDENT). (12 EMPLOYEES).

4832-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SULLIVAN SENECA HILL TOWERS (RESPONDENT). (2 EMPLOYEES).

4835-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BRAFAR CONSTRUCTION (RESPONDENT). (8 EMPLOYEES).

4849-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CAMPBELL SOUP COMPANY LIMITED (RESPONDENT). (5 EMPLOYEES).

4895-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. W. N. HOLDINGS LIMITED (RESPONDENT). (6 EMPLOYEES).

4898-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DELORAINE FORMING CONSTRUCTION LIMITED (RESPONDENT). (7 EMPLOYEES).

4911-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT). (2 EMPLOYEES).

4914-73-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C. (APPLICANT) V. INDUSMIN LIMITED (RESPONDENT). (6 EMPLOYEES).

4922-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF MARCH (RESPONDENT). (16 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING DECEMBER

4579-73-R: RONALD TUCKER (APPLICANT) V. TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENT) V. ALLAN G. COOK LIMITED (INTERVENER). (23 EMPLOYEES). (GRANTED).

4695-73-R: D. LONG (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION - A.F.L., C.I.O., C.L.C. (RESPONDENT). (5 EMPLOYEES). (GRANTED).

4697-73-R: MR. D. AUBERT (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION - A.F.L., C.I.O., C.L.C. (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

4698-73-R: JOHN E. WILSON (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION - A.F.L., C.I.O., C.L.C. (RESPONDENT). (5 EMPLOYEES). (DISMISSED).

4783-73-R: HECTOR LACHANCE (APPLICANT) V. UNITED STEELWORKERS OF AMERICA LOCAL 6363 (RESPONDENT). (7 EMPLOYEES). (DISMISSED).

4886-73-R: DINO LABBATE AND THE EMPLOYEES OF DELTA '70 MFG. Co. (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - U.A.W. (RESPONDENT). (10 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

DECEMBER

4580-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PEEL COUNTY BOARD OF EDUCATION EMPLOYEES' ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).

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APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

4095-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CORDS CANADA LTD. (RESPONDENT). (WITHDRAWN).

4141-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULES "A" & "B" ATTACHED HERETO (RESPONDENTS). (GRANTED).

4142-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. CHARLES IRVINE (RESPONDENT). (GRANTED).

4143-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. GIUSEPPE STEFANUTO AND FRANCISCO SPERA (RESPONDENTS). (DISMISSED).

4144-73-U: THE HYDRO ELECTRIC-POWER COMMISSION OF ONTARIO (APPLICANT) V. MARIO DITARANTO (RESPONDENT). (GRANTED).

4145-73-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. ANTHONY F. AMIS (RESPONDENT). (GRANTED).

4676-73-U: LOCAL UNION 725 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. SAYVETTE LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

DECEMBER

2988-72-U: BEVERLEY HENSHAW (COMPLAINANT) V. LOCAL 525 U.A.W. (RESPONDENT). (WITHDRAWN).

4230-73-U: MR. TERRY McALOONE (COMPLAINANT) V. THE TORONTO MUSICIANS ASSOCIATION (RESPONDENT). (DISMISSED).

4285-73-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 2679 (COMPLAINANT) V. CORONET FURNITURE MANUFACTURING COMPANY LIMITED (RESPONDENT). (GRANTED).

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4337-73-U: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 756 (COMPLAINANT) V. THE BARCLAY HOTEL (RESPONDENT). (WITHDRAWN).

4393-73-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. GRAY'S DEPARTMENT STORES LIMITED (RESPONDENT). (DISMISSED).

4467-73-U: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. K & R READI-MIX (1971) LIMITED (A DIVISION OF CAYUGA MATERIALS & CONSTRUCTION CO. LIMITED) (RESPONDENT). (WITHDRAWN).

4516-73-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. TRILLIUM RECREATIONAL VEHICLES LIMITED (RESPONDENT). (DISMISSED).

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4683-73-U: RAMO KAHRIC (COMPLAINANT) V. LOCAL 200 OF THE U.A.W. (R JACOBS - STEWARD) (RESPONDENT). (DISMISSED).

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4685-73-U: JOHN RODEN AND A GROUP OF EMPLOYEES (COMPLAINANT) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKER'S INTERNATIONAL UNION, LOCAL 351 (RESPONDENT). (WITHDRAWN).

4718-73-U: MRS. KRISTYNA KUPIS (COMPLAINANT) V. TORONTO CARPET MFG. Co. LTD. (RESPONDENT). (WITHDRAWN).

4845-73-U: MARIA WAYNE (COMPLAINANT) V. UNION OF CANADIAN RETAIL EMPLOYEES, C.L.C., AND LOBLAW GROCETERIAS Co. LTD. (RESPONDENTS). (WITHDRAWN).

4890-73-U: ARTHUR P. FORSYTH (COMPLAINANT) V. INTERNATIONAL CHEMICAL WORKERS' UNION LOCAL 595 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

4813-73-M: UNIVERSAL-GIBSON (TRADE UNION) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (EMPLOYER). (GRANTED).

4874-73-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (TRADE UNION) V. SMITH BROS. MOTOR BODIES LIMITED (EMPLOYER). (GRANTED).

4902-73-M: LOCAL 292 OF THE UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (TRADE UNION) V. MONSANTO CANADA LIMITED (EMPLOYER). (GRANTED).

4903-73-M: LOCAL 292 OF THE UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (TRADE UNION) V. MONSANTO CANADA LIMITED (EMPLOYER). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

DECEMBER

4433-73-M: BOBBIER CONVALESCENT HOME (DUTTON) (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (RESPONDENT). (AFFIRMATIVE).

4565-73-M: THE LOCAL BOARD OF HEALTH OF THE BOROUGH OF YORK (APPLICANT) V. THE NURSES' ASSOCIATION, BOROUGH OF YORK HEALTH DEPARTMENT (RESPONDENT). (AFFIRMATIVE).

4736-73-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #148 (APPLICANT) V. THE REGIONAL MUNICIPALITY OF SUDBURY, PIONEER MANOR HOME FOR THE AGED, JUNIOR CITIZENS DAY CARE CENTRE (RESPONDENT). (WITHDRAWN).

REFERENCES TO BOARD PURSUANT TO SECTION 96

4480-73-M: BILDON SAND & GRAVEL (EMPLOYER) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 141 (TRADE UNION). (DISMISSED).

4670-73-M: STEHMLER CONSTRUCTION (EMPLOYER) V. LOCAL #9 OF THE BRICK-LAYERS, MASONS AND PLASTERERS, INTERNATIONAL UNION OF AMERICA (TRADE UNION). (AFFIRMATIVE).

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4711-73-M: VROOM DEVELOPMENT (CENTRAL) LIMITED (EMPLOYER) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

2827-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (INTERVENER). (REQUEST DENIED).

3583-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TOWLAND-HEWITSON CONSTRUCTION LIMITED (RESPONDENT) V. EMPLOYEES (OBJECTORS). (REQUEST DENIED).

4017-73-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. HEMBRUFF AND DAMBROWITZ (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

4153-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HOEY & McMILLAN LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

3824-73-R: YVON COTÉ ON BEHALF OF A GROUP OF EMPLOYEES (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CHAPLEAU LUMBER CO. LTD. (INTERVENER). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4584-73-U: WALTER CLEMENT SARICH (COMPLAINANT) V. ALGOMA STEEL CORPORATION LIMITED (RESPONDENT). (REQUEST DENIED).

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STATISTICAL TABLES 3RD QUARTER AND 1ST 9 MONTHS OF FISCAL YEAR 1972-73

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	3RD QUARTER ¹	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
I. CERTIFICATION	317	1020	831
II. DECLARATION TERMINATING BARGAINING RIGHTS	21	50	49
III. DECLARATION OF SUCCESSOR STATUS	10	26	21
IV. DECLARATION THAT STRIKE UNLAWFUL	10	34	33
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	3	2
VI. CONSENT TO PROSECUTE	18	74	78
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	45	154	170
VIII. MISCELLANEOUS	<u>34</u>	<u>78</u>	<u>108</u>
TOTAL	456	1439	1292
	==	==	==

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	331	972	839

¹ OCTOBER TO DECEMBER.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
I. CERTIFICATION	367	1022	810
II. DECLARATION TERMINATING BARGAINING RIGHTS	17	40	44
III. DECLARATION OF SUCCESSOR STATUS	2	31	13
IV. DECLARATION THAT STRIKE UNLAWFUL	9	32	26
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	3	2
VI. CONSENT TO PROSECUTE	20	75	114
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79)	40	163	175
VIII. MISCELLANEOUS	<u>32</u>	<u>61</u>	<u>94</u>
TOTAL	<u>487</u>	<u>1427</u>	<u>1278</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
3RD QUARTER FISCAL YEAR	1ST 9 MTHS. F.Y.		3RD QUARTER FISCAL YEAR	1ST 9 MTHS. F.Y.	
<u>1973-74</u>	<u>1973-74</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1973-74</u>	<u>1972-73</u>

I. CERTIFICATION

GRANTED	241	685	543	17057	29093	16984
DISMISSED	85	226	177	3454	9727	10182
WITHDRAWN	<u>41</u>	<u>111</u>	<u>90</u>	<u>717</u>	<u>2430</u>	<u>2471</u>
TOTAL	367	1022	810	21228	41250	29637
	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	9	22	22	142	1069	457
DISMISSED	8	18	16	1146	1657	248
WITHDRAWN	<u>-</u>	<u>-</u>	<u>6</u>	<u>-</u>	<u>-</u>	<u>122</u>
TOTAL	17	40	44	1288	2726	827
	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

	NUMBER OF APPLICATIONS		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
<u>III. DECLARATION THAT STRIKE</u>			
<u>UNLAWFUL</u>			
GRANTED	1	3	5
DISMISSED	-	5	5
WITHDRAWN	<u>8</u>	<u>24</u>	<u>16</u>
TOTAL	9	32	26
	-	-	-
<u>IV. DECLARATION THAT LOCK-OUT</u>			
<u>UNLAWFUL</u>			
GRANTED	-	-	-
DISMISSED	-	3	1
WITHDRAWN	<u>-</u>	<u>-</u>	<u>1</u>
TOTAL	-	3	2
	=	=	=
<u>V. CONSENT PROSECUTE</u>			
GRANTED	5	13	15
DISMISSED	3	13	32
WITHDRAWN	<u>12</u>	<u>49</u>	<u>67</u>
TOTAL	20	75	114
	=	=	=
<u>VI. COMPLAINT OF UNFAIR</u>			
<u>PRACTICE IN EMPLOYMENT</u>			
<u>(SECTION 79)</u>			
GRANTED	3	12	13
DISMISSED	12	56	67
WITHDRAWN	<u>25</u>	<u>95</u>	<u>95</u>
TOTAL	40	163	175
	=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF APPLICATIONS		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	18	56	28
POST-HEARING VOTE	29	73	54
BALLOTS NOT COUNTED	-	-	2
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	14	35	29
POST-HEARING VOTE	18	36	42
BALLOTS NOT COUNTED	<u>1</u>	<u>3</u>	<u>3</u>
TOTAL	80	203	158
	<u>=</u>	<u>=</u>	<u>=</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	3RD QUARTER	1ST 9 MONTHS FISCAL YEAR	
	FISCAL YEAR 1973-74	1973-74	1972-73
*RESPONDENT UNION SUCCESSFUL	-	3	1
RESPONDENT UNION UNSUCCESSFUL	<u>5</u>	<u>13</u>	<u>10</u>
TOTAL	5	16	11
	<u>=</u>	<u>=</u>	<u>=</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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